Supreme Court, U.S.
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No. 88-2031

In the Supreme Court of the United States

OCTOBER TERM, 1989

UNITED STATES OF AMERICA, PETITIONER

v.

MARSHA B. KOKINDA AND KEVIN E. PEARL, RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED JUNE 13, 1989
CERTIORARI GRANTED OCTOBER 2, 1989

BEST AVAILABLE COPY

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 87-5107

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

MARSHA B. KOKINDA AND KEVIN E. PEARL, DEFENDANTS-APPELLANTS

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
7/17/87	Criminal case docketed. (dsh)
7/17/87	Docketing statement filed by Appellant Kevin E. Pearl, Appellant Marsha B. Kokinda [198830-1]. T/S needed: y; T/S already on file: n. [87-5107] (dsh)
7/17/87	Record on appeal filed. (Pleadings: I [87-5107] (dsh)
7/17/87	Briefing order filed. A/P brief due: August 21, 1987; Projected calendar: December 1987. [87-5107] (dsh)
7/17/87	Docketing notice issued. [87-5107] (dsh)
7/24/87	Motion filed by Appellant Kevin E. Pearl, Appellant Marsha B. Kokinda rescinding Briefing order. [125542-1] [87-5107] (dsh)
7/24/87	Print wrappers (dsh)
7/27/87	Clerk order filed granting motion rescinding briefing order [125542-1]. Copies to all counsel. [87-5107] (dsh)

8/6/87 Transcript order filed for Elizabeth A. Michael. [87-5107] (sgp) (Entry date 8/13/87]

8/6/87 Transcript order acknowledgment filed for Elizabeth A. Michael. Date ordered: August 6, 1987. Due date: September 8, 1987. Pages: 250 [87-5107] (sgp) [Entry date 8/13/87]

9/23/87 Supplement to record on appeal filed. (Supplement #:1 Pleadings: II T/S: III, IV). [87-5107] (dsh)

9/23/87 Docketing notice forms. (dsh)

9/23/87 Briefing order filed. A/P brief due: October 28, 1987; Projected calendar: January 1988. [87-5107] (dsh)

10/13/87 Motion filed by Appellant Kevin E. Pearl, Appellant Marsha B. Kokinda to extend time to file brief until 11/28/87 [309296-1] [87-5107] (dsh) (Entry date 10/15/87]

10/20/87 Print wrappers (dad)

10/22/87 Clerk order filed granting motion to extend time to file brief [309296-1] until: 11/12/87 Copies to all counsel. [87-5107] (dad)

10/22/87 Docketing notice forms. (dad)

10/23/87 Record on Appeal released to printer M. Hudgins. (Pleadings: Vols. I, II T/S: Vols. III, IV). [87-5107] (elf) [Entry date 10/26/87]

10/26/87 Released record on appeal returned to Fourth Circuit by M. Hudgins. (Pleadings: Vols. I, II T/S: Vols. III, IV). [87-5107] (elf)

10/27/87 Motion filed by R. David Pembroke for Appellant Kevin E. Pearl to relieve attorney [332688-1] [87-5107] (dsh)

10/27/87 Terminated attorney R. David Pembroke for Kevin E. Pearl [87-5107] (dsh)

10/27/87 Attorney added to case. [87-5107] Counsel of record form due 11/6/87 for Jay Alan Sekulow, for R. David Pembroke, for Jay Alan Sekulow, for Hollis Raphael Weisman. Disclosure statement due (dsh)

10/27/87 Order granting attorney motion to relieve attorney [332688-1] declared moot. [87-5107] (dsh)

10/29/87 Appearance form filed by Jay Alan Sekulow for Appellant Kevin E. Pearl, Appellant Marsha B. Kokinda. [87-5107] (dsh)

11/12/87 Motion filed by Appellant Kevin E. Pearl, Appellant Marsha B. Kokinda to extend time to file brief until 11/19/87 [368113-1] [87-5107] (dsh)

11/12/87 Print wrappers (dsh)

11/12/87 Clerk order filed granting motion to extend time to file brief [368113-1] until: 11/20/87 Copies to all counsel. [87-5107] (dsh)

11/12/87 Supplement to record on appeal filed. (Supplement #: II Exhibits: V). [87-5107] (dsh)

11/20/87 Print wrappers (dsh)

11/20/87 Motion filed by Appellant Kevin E. Pearl, Appellant Marsha B. Kokinda to extend time to file brief until 7 days after filing of missing exhibits. [388953-1] [87-5107] (dsh)

11/23/87 Clerk order filed granting motion to extend time to file brief [388953-1] until: 7 days after filing of missing exhibits. Copies to all counsel. [87-5107] (dsh)

11/30/87 Supplement to record on appeal filed. (Supplement #: III Pleadings: VI and 1 exhibit). [87-5107] (dsh) [Entry date 12/1/87]

12/7/87 Brief and joint appendix filed by Appellant. Type of Service: HD Copies of brief: 12 Copies of apx: 6. Sufficient [Y/N]: y. [87-5107] (wtc) [Entry date 12/8/87]

12/7/87 Amicus curiae brief filed by Christian Advocates Serving Evangelism and Project for Public Space, Inc. Type of Service: hd Copies of brief: 12 #pages: 28. Sufficient [Y/N]: n. awaiting action on motion to file. [87-5107] (ks) [Entry date 12/8/87]

12/8/87 Print wrappers (dsh)

12/8/87 Motion filed by Christian Advocates Serving Evangelism and Project For Public Spaces, Inc. to file amicus brief. [87-5107] (dsh)

12/9/87 Response to [424673-1] motion to file amicus brief requested of Appellant Kevin E. Pearl, Appellant Marsha B. Kokinda, Appellee US on or before 12/16/87. [87-5107] (dsh)

12/10/87 Case referred to OSC for screening. [87-5107] (ski)

12/22/87 Response [456841-1] to motion to file amicus brief [424673-1] filed by Appellant Kevin E. Pearl, Appellant Marsha B. Kokinda. [87-5107] (dsh)

12/30/87 Brief filed by Appellee. Type of Service: CS Copies: 12. Sufficient [Y/N]: y. [87-5107] (wtc) [Entry date 1/5/88]

1/4/88 Response [477653-1] to motion to file amicus brief [424673-1] filed by Appellee. [87-5107] (jsj)

1/5/88 Clerk order filed granting motion to file amicus brief [424673-1] Copies to all counsel. [87-5107] Counsel of record form due (date not set) (jsj)

1/5/88 Party added to case. [87-5107] Counsel of record form due 1/15/88 for R. David Pembroke, for R. David Pembroke (jsj)

1/5/88 Print wrappers (jsj)

1/12/88 Case tentatively calendared for oral argument Term: March. Place: Baltimore. [87-5107] (ski)

1/14/88 Calendar forms. (ski)

1/20/88 Appearance form filed by attorney for Amicus Curiae. [87-5107] (dad)

1/22/88 Case calendared for oral argument. [87-5107] (ski)

1/25/88 Reply brief filed by Appellant. Type of Service: HD Copies of brief: 12. Sufficient [Y/N]: y. [87-5107] (jc)

3/7/88 Oral argument heard. Courtroom Deputy: dad. [87-5107] (dad)

3/14/88 HEW designated as authoring judge. [87-5107] (amy)

3/16/88 Case moved to counsel of record form status — awaiting cor. (su)

3/23/88 Old deadlines terminated. (gc)

3/23/88 Attorney appearances complete. [87-5107] (dsh)

5/24/88 Record on appeal transmitted to HEW. (complete) Total # of vols sent: 6 vols. I-VI. [87-5107] (jc)

1/25/89 Authored opinion received from chambers of JHW. [87-5107] (csn)

1/26/89 Opinion transmitted to printer. (csn)

1/31/89 Published authored opinion filed. [87-5107] (dsd)

1/31/89 Judgment order filed. Case 87-05107: Terminated on the Merits after Oral Hearing; Reversed; Written, Unsigned, Published. JHW, Authoring Judge, HEW, Dissenting Judge, FDM, Judge. [87-5107] (dsd)

1/31/89 Opinion returned from printer. [87-6142, 88-2073, 88-6036, 88-6042, 87-5107, 88-6734, 87-7095, 88-6762, 88-7244] (csn)

2/10/89 Motion filed by Appellee US to extend time to file petition for rehearing 3/16/89 [1193050-1] [87-5107] (dsd)

2/10/89 Clerk order filed granting motion to extend time to file pet reh [1193050-1] Copies to all counsel. [87-5107] (dsd)

3/15/89 Petition filed by Appellee for rehearing. Number copies filed: 16 [1205081-1], for suggestion for rehearing in banc. Number of copies filed: 16 [1205081-2] [87-5107] (dad)

3/17/89 Record on appeal returned by HEW (Pleadings: Vols. 1, 2, 6 T/S: Vols. 3, 4, Exhibits: Vol. 5). [87-5107] (ejm)

3/17/89 Response to [1205081-2] motion for suggestion for reh in banc, [1205081-1] motion for rehearing requested of Appellant on or before 3/31/89. [87-5107] (dad) [Entry date 3/21/89]

3/31/89 Response [1211187-1] to motion for rehearing [1205081-1], motion for suggestion for reh in banc [1205081-2] filed by Appellant Kevin E. Pearl, Appellant Marsha B. Kokinda. [87-5107] (dsd)

3/31/89 Submitted to panel, response [1211187-1] [87-5107] (dsd)

4/14/89 Court order filed by DSR, HEW, KKH, RFC, WWW, SJE, HLW, JDP, FDM, JMS, JHW denying motion for rehearing [1205081-1], denying motion for suggestion for reh in banc [1205081-2] to publish order dated 04/14/89 [1216339-1]. Copies to all counsel. [87-5107] (dsd)

5/18/89 Mandate issued. [87-5107] (rm)

5/18/89 Record on appeal returned to USDC at DMD-Baltimore. (Pleadings: vols. 1,2, & 6 T/S: Vols. 3 & 4 Exhibits: Vol. 5). [87-5107] (rm)

6/26/89 Supreme Court notice received of filing of petition for certiorari on 06/13/89. Supreme Court No. 88-2031. [87-5107] (jm)

10/6/89 Supreme Court order filed 10/02/89 granting petition for certiorari. Supreme Court No. 88-2031. [87-5107] (jm)

10/10/89 Record on appeal requested from the Supreme Court. Pleadings: Vols. 1,2,6 T/S: Vols. 3 & 4 Exhibits: Vol. 5) [87-5107] (rm)

10/13/89 Released record on appeal returned to Fourth Circuit by DMD-Baltimore. (Pleadings: Vols. 1,2 & 6 T/S: Vols. 3 & 4 Exhibits: Vol. 5). [87-5107] (rm) [Entry date 10/18/89]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. JFM-87-083

MARSHA B. KOKINDA AND KEVIN E. PEARL

v.

UNITED STATES OF AMERICA

RELEVANT DOCKET ENTRIES

DATE		PROCEEDINGS
Feb. 24	1	Appeal from Judgment of United States Magistrate (Kenkel, U.S. Mag) (EOD 2/27/87 jv)
Feb. 27	–	Copy of Appeal Letter mailed to defendant's counsel (R. David Pembroke Esq.) together with copy of Local Rule #82. (Receipt for $5.00 taken at time of pymt 2/27/87 by counsel).
Feb. 27	–	Magistrate's papers requested.
Mar. 2	2	Magistrate (Kenkel, U.S. Mag) papers received 3/2/87.
Mar. 2	–	Copies furnished U.S. Attorney.
Mar. 9	3	Motion of defendant PEARL For Stay of Sentence Pending Appeal. (c/s)
Mar. 26	4	Appellants' Memorandum of Law in Support of Appeal. (c/s)
Mar. 30	5	Order (MURRAY, J) dated March 27, 1987 "DENYING" motion of Appellant PEARL For Stay of Sentence Pending Appeal and sentence and probation imposed by the U.S. Mag on February 17, 1987 will be in full force and effect pending this appeal. (c/m EOD 3/30/87 jv)
Apr. 24	6	Government's Memorandum of Law in answer to Appellants' Appeal. (c/s)
Jun. 25	7	Memorandum and Order (Motz, J.) affirming defendants' convictions.
Jun. 30	8	JUDGMENT: that the defendant's convictions are affirmed, Order (Motz, J.) dated 6/25/87. (c/m,eod 7/1/87).
July 6	9	Notice of Appeal of Defendants. (Filing Fee Paid) (C/M 7-15-87) T.P.O.F. & D/S mailed 7-6-87)
July 15	–	Record on Appeal transmitted to the U.S. Court of Appeals for the Fourth Circuit, Richmond, Virginia (Volume I)

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE HONORABLE MAGISTRATE JAMES E. KENKEL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

No.: HM-87-083
87-5107

Baltimore, Maryland
November 18, 1986

UNITED STATES OF AMERICA,

vs.

MARSHAL [sic] B. KOKINDA and KEVIN PEARL, DEFENDANTS

APPEARANCES

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Audio Recorder:

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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* * * * *

[3] (Case called.)

THE COURT: You can move chairs around, have clients sit together or lawyers sit together or alternate or however.

MR. PEMBROKE: Good afternoon, your Honor. David Pembroke on behalf of the defendants.

THE COURT: You're going to represent both defendants?

MR. PEMBROKE: Yes, your Honor.

THE COURT: All right. And you've reviewed with them the problems associated with joint representation?

MR. PEMBROKE: Yes, your Honor.

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* This table gives page numbers from the original transcript of the district court proceedings. That original pagination is indicated in this Appendix by bracketed page numbers.

THE COURT: All right. And Mr. Pearl and Ms. Kokinda, is it, have you both specifically agreed to have one attorney represent both your interests?

MS. KOKINDA: Yes.

THE COURT: The defendants, if you could have a seat, then. Where are we on preliminary matters?

MR. PEMBROKE: Yes, your Honor. There's a motion to dismiss and suppress before the Court and it's a preliminary matter. I would also make a request at this time, your Honor, for the rule on witnesses.

THE COURT: We'll do that first. Witnesses expected to testify for either the Government or either or both defendants in this case except for the Government's first witness are requested to step outside and not discuss your testimony [4] until after you've testified. Each side is responsible for your own witnesses.

MS. WEISMAN: Your Honor, we have one investigating officer with the Postal Service I really need to assist me during the course of this trial and it is the practice in this Circuit and I believe the rule provides specifically for that.

THE COURT: Who is testifying?

MS. WEISMAN: Yes, he will be testifying. However, this is a case that involves a lot of documents and I do need for him to be here.

THE COURT: Okay. Can he be called first out of turn?

MS. WEISMAN: I suppose I could call him first.

THE COURT: Do that. All right. Let him stay at counsel table and all the other witnesses please step outside and counsel hearing this, Government's going to have to have some latitude then to enforce your rule to allow whatever problems may be associated with possibly testifying out of turn.

MR. PEMBROKE: Yes, your Honor.

THE COURT: Now, on the motions, can it be handled as part of the trial or does the Government wish to have them heard first?

MS. WEISMAN: Well—

THE COURT: It's a motion to suppress.

[5] MS. WEISMAN: Yes, your Honor. I would ask that the motions be heard first and not as part of the trial.

THE COURT: It's a docket entry to that effect and is it based on a warrantless arrest, so the Government may call its first witness.

MS. WEISMAN: Is the Court considering the—it's kind of a strange motion. At least I'm not used to a combined motion like this, your Honor. There's a motion to dismiss which appears to be based on purely legal grounds as well as the motion to suppress evidence. Is the Court going to hear these together or separately?

THE COURT: Factually we take just the motion—well there may be—are there factual matters involved in the motion to dismiss?

MR. PEMBROKE: Your Honor, the motion to suppress is actually predicated on the fact that we are asking that your Honor rule that the statute and the regulation involved in this case were on the first instance as unconstitutional and on the second one was unconstitutionally applied in this case to the defendants. Taking that one step further, certain evidence was seized pursuant to their arrest. It's our contention that if the statutes and the regulation under which the defendants were arrest was unlawful then their arrest is unlawful and therefore the evidence was not lawfully seized and cannot be used as evidence.

[6] THE COURT: Well, it's even more pragmatic. If the statute falls regardless of the seizure—

MR. PEMBROKE: The case must fall too.

THE COURT: —the case must fall. So I think factually then—

MR. PEMBROKE: I don't believe it would be necessary to put on testimony.

THE COURT: I guess we'll hear then the motion to suppress and certainly reserve all your arguments after that

for at that time or whenever we are on the motion to dismiss that's facially constitutionally defective and as applied constitutionally defective. The matters are consolidated between defendants for purposes of hearing and trial. So this be on Government's response to the motion to suppress, taking the lead given the fact that as I understand it it's a warrantless arrest, a warrantless search and seizure.

MS. WEISMAN: We will in fact concede that there was a warrantless arrest, your Honor.

THE COURT: All right.

MS. WEISMAN: The Government has submitted an answer to the defendants' motion which indicates that the offenses occurred in the presence of the officers. Based on that, I would submit that an officer may make – a law enforcement officer may make an arrest for something that occurs in his presence. Once he's made an arrest, he may seize anything that's within [7] the wingspan of the people being arrested. I could put in – put on testimony to that effect but we have certainly proffered that in our answer.

THE COURT: Any problem with that proffer? It's sort of intertwined with the – unless you have new grounds that it's – correct me if I'm wrong, if the regulation and Maryland statute are held at this level to be constitutional facially and as applied, then would you concede that what the postal officers observed were facts which were and gave them probable cause to believe that the offense was being committed and that these defendants committed it or is there something that – how they got the information or all the other traditional grounds of a motion to suppress?

MR. PEMBROKE: Your Honor, at this point I'm not – I don't know since the testimony's not been elicited exactly what the postal inspectors might have seen and how they reacted other than arrest them. The Government

has made a proffer but in terms of testimony there's been no testimony that actually establishes –

THE COURT: All right. That's fair. Then they have to put it. But I didn't know – it's a little – I think what the Government's suggesting that it – you're raising obvious very serious First Amendment – –

MR. PEMBROKE: Yes, your Honor.

THE COURT: – grounds in the applicability of the [8] Maryland statute and the federal regulation. But I guess he is saying that whatever that status is, what the people saw – find at that time a properly enacted regulation and statute gave them probable cause to believe that the offenses were being committed in violation of the regulations and regulation and statute and that these defendants were doing it. You're certainly entitled to testimony on that.

MR. PEMBROKE: Well, your Honor, perhaps it might be easier in – procedurally if we deal with the First Amendment Constitutional issues first and them pick up the – if necessary, pick up the motion to suppress following the Court's ruling on the cnstitutionality of the statute and the regulation.

THE COURT: Okay. I'd be glad to do it either way. If you want some factual testimony it may – well, you're going to require it for your argument anyway. Just really a question of who goes first.

MR. PEMBROKE: Yes, your Honor.

THE COURT: Why don't you put on enough for the probable cause and then we'll hear you?

MS. WEISMAN: Very well, your Honor.

THE COURT: All right.

MS. WEISMAN: We'd call Mr. Cochran. Your Honor, before he is sworn, does the Court have the Exhibits that we have appended to our answer?

THE COURT: Yes, I did. I've reviewed them, pictures and diagrams.

MS. WEISMAN: I will be referring to them and in addition, I'd like to submit an additional exhibit. I think I've got the only copy in the Government. I couldn't find the actual I had the Xeroxes. That would be Exhibit E-1 and E-2.

THE COURT: All right. It will be received as part of the Government's answer, a copy being furnished to counsel for the defendant. Swear the witness.

JULIUS COCHRAN, GOVERNMENT'S WITNESS, SWORN.

DIRECT EXAMINATION

BY MS. WEISMAN:

Q. Sir, would you please state your name and place of employment?

A. Julius Cochran. I'm an inspector with the United States Postal Service.

Q. And as an inspector what are your duties?

A. We investigate all allegations of violations of postal crimes.

Q. And are you a sworn law—commissioned law enforcement officer?

A. Yes, I am.

Q. Now, I'd like to direct your attention to August 6th, 1986. Did there come a time that you were called to the Bowie Post Office?

[10] A. Yes, there did.

Q. And where is that located?

A. It's located on Laurel—Bowie Road in Bowie, Maryland.

Q. And what county is that in?

A. That's in Prince George's County.

Q. And is that a United States Post Office under the U.S. Postal Service?

A. Yes, it is.

Q. And what time did you get there?

A. I arrived at approximately 3:15.

Q. And why did you go there?

A. Based on a telephone call I had received earlier.

Q. From whom?

A. From the Postmaster.

Q. What's his name?

A. Larry Poe.

Q. What did he tell you?

MR. PEMBROKE: Objection.

THE COURT: Overruled for the purposes of the motion.

A. That two individuals were in front of his Post Office soliciting funds and annoying customers as they entered.

Q. When you got there what did you find?

A. Two individuals had set up a table in front of the Bowie, Maryland Post Office on the sidewalk directly in front of the Post Office.

Q. And do you see those—either of those people in the Courtroom today?

A. Yes, I do.

Q. Can you identify them?

A. They're sitting at counsel's table to the right of the attorney.

Q. Now had you ever seen either of the defendants before?

A. Yes, I have.

Q. When and where was that?

MR. PEMBROKE: Objection.

THE COURT: Is there a proffer on this?

MS. WEISMAN: Yes, your Honor. I think notice is an element certainly of the trespass statute.

THE COURT: Overruled.

A. Yes, on July 24th, 1986.

Q. And would you describe the circumstances under which you encountered them on July 24th?

A. Yes. They were at the Glendale, Maryland Post Office with a table set up in front of that location.

Q. And did you go there that day?

A. Yes, I did.

Q. And what happened between you and them?

A. I gave them a copy of Poster 7 and advised them that on that day their activities were illegal.

Q. And Poster 7, is that what is marked currently as Exhibit [12] D?

A. Yes, it is, entitled Rules and Regulations Governing Conduct on Postal Property.

Q. Now, when you saw the defendants on August 6th, what happened?

A. I observed them for a period of time before approaching them.

Q. Now where were you when you watched them?

A. On postal property in the corner of the lot.

Q. And what were the defendants doing?

A. Talking to customers entering and leaving the Post Office, asking them to subscribe to a—

MR. PEMBROKE: Objection.

THE COURT: Overruled.

Q. —asking them to subscribe to a newsletter and attempting to sell various literature that they had on the table.

MR. PEMBROKE: Excuse me, your Honor. My objection's based on he didn't indicate if he was close enough to hear.

THE COURT: You may respond to what did you see or hear. Is that what you heard?

THE WITNESS: Yes, sir.

THE COURT: Overruled.

Q. How long a period did you watch this go on?

A. For a few minutes, three or four minutes.

Q. What happened then?

[13] A. Then another inspector joined me and we approached the two individuals.

Q. What happened then?

A. We identified ourselves as Postal Inspectors, attempted to give them another copy of Poster 7 and at that time were informed by Ms. Kokinda that you've given us that before and something to the effect that I know it by heart.

Q. What did you do then?

A. We told them again that their activities were illegal and asked them to leave the Post Office and at that time they refused.

Q. What did you do after that?

A. At that point we asked for identification. Ms. Kokinda refused to give any identification. Mr.—

Q. Did you ask Ms. Kokinda her name?

A. Yes.

Q. What did she tell you?

A. I don't have to give you that or something to that effect.

Q. What happened after that?

A. Mr. Pearl stated I think my name is Kevin Pearl.

Q. Did either of the defendants show you any identification?

A. No, they did not.

Q. Driver's license or anything like that?

A. No, they did that.

Q. What happened after that?

[14] A. At that point they were placed under arrest.

Q. Now, did you-are you empowered to simply hand out violation notices?

A. We're also empowered to make arrests, serve subpoenas.

Q. And did you have any violation notices like tickets?

A. Yes, I did.

Q. Why didn't you just give that to them?

A. In order to issue a violation notice, the true identity of the person has to be known.

Q. And were you—did they tell you or give you any satisfactory identification at that point?

A. No, they had not.

Q. When you say you placed them under arrest, exactly what did you do?

A. I told them that they were under arrest for trespassing and soliciting on postal property and they were taken to our office to be processed.

Q. Now, were there any items that you seized from the scene around them at the Post Office?

A. Yes, there were.

Q. What was that?

A. We see that—we seized the table that they had set up in front of the Post Office, a A-shaped frame that had a poster on it. On the table there were various publications—excuse me—and forms and credit card receipts.

[15] Q. Now, I'm going to show you what's been marked as Exhibit A for purposes of this hearing. Do you recognize what this is?

A. Yes. This is a plat drawing of the Post Office property.

Q. And is that the Bowie Post Office that you just referred to?

A. Yes, it is.

Q. And can you show the Court precisely where on that drawing, Exhibit A, Ms. Kokinda and Mr. Pearl were?

MR. PEMBROKE: May I approach the witness?

THE COURT: All right. This document doesn't show up in your photos?

MS. WEISMAN: Yes, your Honor. Those are photographs of the area being referred to now.

Q. So it's approximately where the O is on the word canopy over?

A. Yes, it is.

Q. On Exhibit A?

A. On Exhibit A.

Q. And is Exhibit A a fair and accurate drawing of the property that the Post Office is located on?

A. Yes, it is.

MS. WEISMAN: Your Honor, we would move to introduce Exhibit A into evidence for purposes of this hearing.

THE COURT: Any objection for this purpose?

MR. PEMBROKE: The Court's indulgence.

[16] THE COURT: You're placing them in the O in canopy over?

THE WITNESS: Yes, sir.

THE COURT: Is that right, in the word canopy as a general location?

THE WITNESS: Yes.

MR. PEMBROKE: No objection.

THE COURT: It will be received without objection as marked up.

Q. I show you what's been marked for identification for purposes of this hearing as Exhibit – Exhibit B-1. Can you identify what the top photograph is on that page?

A. The top photograph is the front of the Bowie, Maryland Post Office.

Q. Is that a fair and accurate picture of the way the Post Office looked on August 6th?

A. Yes, it is.

Q. What is the bottom picture on there?

A. Is is also a picture—a photograph taken on August 6th in front of the Bowie, Maryland Post Office.

Q. And who is in that photograph?

A. My back, Ms. Kokinda is standing, Mr. Pearl is seated at the table.

Q. And is that a fair and accurate picture of where you were standing that afternoon?

[17] A. Yes, it is.

Q. And I show you what's been marked for identification for purposes of this hearing B-2. Can you identify what the top picture is?

A. The top photograph is also a photograph taken on August 6th in front of the Bowie, Maryland Post Office. It depicts Inspector O'Hara with his back to the photograph—in the photograph. I'm pictured to the right, Mr. Pearl is seated and Ms. Kokinda is standing.

Q. And is that a fair and accurate picture of the way you looked that afternoon?

A. I think it is. Yes, it is.

Q. And the bottom picture, is that also of the same scene and angle?

A. A different angle, yes, it is.

Q. And I show you what's been marked for identification for purposes of this hearing Exhibit B-3. Can you identify what that—the top picture is?

A. This photograph was also taken on August 6th in front of the Bowie, Maryland Post Office. It shows Mr. Pearl seated at the table.

Q. And what is that to the left of the picture?

A. A mail box, the collection box in front of the Bowie, Maryland Post Office.

Q. And is that a fair and accurate picture of the way they [18] were positioned that afternoon when you saw them?

A. Yes, it is.

Q. And the bottom picture, can you identify that?

A. The bottom photograph was also taken on August 6th in front of the Bowie, Maryland Post Office showing Mr. Pearl seated at the table and Ms. Kokinda standing beside the table.

Q. Is that a fair and accurate picture of where they were that afternoon?

A. Yes, it is.

MS. WEISMAN: Your Honor, for purposes of the hearing we'd offer Exhibits B-1, 2 and 3 into evidence.

THE COURT: Any objection to the photographs?

MR. PEMBROKE: No objection.

THE COURT: All right. They'll be received in evidence as B-1, 2 and—be as Government's next sequential number exhibits.

MS. WEISMAN: I'm trying to use letters, your Honor, to distinguish the trial from the hearing.

THE COURT: All right. B-1, 2 and 3.

Q. Now, the area on Exhibit Number A, Exhibit letter A, is that sidewalk where it says canopy over? What is that sidewalk adjacent to?

A. It's adjacent to the Post Office building.

Q. And is—are there any other stores or office buildings or anything else that has access from that sidewalk?

[19] A. No. That sidewalk is dedicated for postal—Post Office.

Q. What is to the left on Exhibit A? Is there offices or streets or parking lots or what?

A. I don't recall.

Q. Is it a shopping center?

A. No. I believe it's a wooded area.
Q. Is the Post Office located in a shopping center?
A. No, it's not.
MS. WEISMAN: Your Honor, that is all the testimony that I have for purposes of this hearing. The Government does have numerous exhibits that were seized from the defendants. I'm not sure exactly–
THE COURT: Well is there a listing of them, a listing?
MS. WEISMAN: No, I just have them. I can have them identified.
Q. Inspector Cochran, I'd like you to look at what's been marked for identification as Government's Exhibits 1, 2 and 3. Do you know what they are?
A. Yes. They are forms with the letterhead of National Democratic Policy Committee with a post office box in Washington, D.C.
Q. And where'd you get them from?
A. They were on the table which was seized from the two defendants.
[20] Q. And were they filled out the way they are now at the time that you got them?
A. Yes. They were completed.
Q. And I show you what's been marked for identification as Government's Exhibit Number 4. Do you know what that is?
A. It's a credit card receipt which was also completed in the amount of $25 for–
Q. And did you also get that off of Mr. Pearl's and Ms. Kokinda's table?
A. It was also on the table.
Q. And Government's Exhibit Numbers 5 and 6, do you know what they are?
A. They're blank credit card receipts which were also on the table.
Q. And Government's Exhibits Numbers 7 and 8, can you identify what they are?

A. Yes. They're sheets of paper which show the site that the individuals were and a date and it shows Bowie P. O. on 8/6/86 and it has names, phone numbers and towns besides.
Q. And did you get them off of the table where Mr. Pearl and Ms. Kokinda were?
A. Yes.
Q. And Exhibit Number 9, can you identify that?
A. It's a blank form which shows subscription fees for various publications, I guess.
[21] Q. And did you get that off of the same table?
A. Yes, I did.
Q. And Exhibit Number 10, what's that?
A. It's a magazine entitled EIR, Executive Intelligence Review with a date and a price of $10 on it.
Q. And how many of these were on that table?
A. Approximately 20 to 25.
Q. Did you seize this from the table?
A. It also came from the table.
Q. Exhibit Number 11, can you identify that?
A. It's a booklet entitled LaRoche [sic] Warns of 1986 Economic Blow-Out. It also has a suggested contribution price on it.
Q. And how many of those were on the table?
A. Probably 20, 25.
Q. And is that where you got Government's Exhibit 11?
A. That also came from the table.
Q. And Exhibit Number 12, can you identify that?
A. It's a publication entitled New Solidarity with a date and a–or a price on it.
Q. And how many of those were on the table?
A. Probably a like number, 20, 25.
Q. And Exhibit Number 13, can you identify that?

A. It's a publication called Fusion dated May/June 1986 with a price which was also removed from the table.

Q. And were there any more on that table?

[22] A. There were many more.

MS. WEISMAN: Your Honor, the Government would offer Exhibits 1 through 13 into evidence.

THE COURT: For the purposes of the hearing, they'll be received as being the items or some of the items seized after you placed the defendants under arrest at Bowie Post Office, August 6th, 1986.

THE WITNESS: That's correct.

THE COURT: For the purposes of this hearing, they're admitted.

Q. And I'd like you to look at what's been marked for identification as Exhibits Number 14, 15 and 16. Can you identify them?

A. These are books which were also seized from the table after the defendants were arrested.

Q. And how many of these books were on the table?

A. Probably another four or five.

Q. Of each book?

A. Of each book, yes.

MS. WEISMAN: Your Honor, we would make the same motion for admission into evidence for purposes of the hearings Exhibits 14, 15 and 16.

THE COURT: All right, so marked. They'll be admitted for the purposes of this hearing.

MS. WEISMAN: Your Honor, that is the only testimony [23] that I have at this time, the only questions that I have at this time.

THE COURT: Let me ask a question or two. Because the Court's asking the question, please don't necessarily accept the question or make your answer accordingly. How long were you there at Bowie on August 6th prior to

making a determination to place the defendants under arrest?

THE WITNESS: Three to five minutes, maybe a little longer than that.

THE COURT: And from your vantage point, you could see the items that were—generally, you couldn't see the actual wording, you could see the items that were—have been admitted for the purposes of this hearing?

THE WITNESS: I could see the items, various items on the table. I couldn't read the titles and overheard some of the conversations that were had.

THE COURT: And did you make any specific requests for either or both defendants to move on?

THE WITNESS: Prior to approaching them, no sir.

THE COURT: No, prior to placing them under arrest?

THE WITNESS: Yes. We advised them that their activities were unlegal—illegal, asked them to leave the Post Office property.

THE COURT: And what was the response from either of these defendants?

[24] THE WITNESS: They stated they were not leaving the property.

THE COURT: And your decision to place them under arrest was for what you saw there with their activities which you described as soliciting?

THE WITNESS: Yes, sir.

THE COURT: And this was during the time that the Post Office was open for regular business?

THE WITNESS: The Post Office was open for regular business.

THE COURT: Okay. Counsel?

MR. PEMBROKE: The Court's indulgence.

CROSS-EXAMINATION

BY MR. PEMBROKE:

Q. Inspector Cochran?

A. That's right, correct.

Q. Thank you. You've indicated that Exhibit B-1—

MR. PEMBROKE: May I approach?

THE COURT: Um-hum.

Q. —is a picture that was taken on August the 6th and it—the top picture indicates the front of the Post Office?

A. That's correct.

Q. And the bottom picture indicates this gentleman is yourself?

A. That is.

[25] Q. And Mr. Pearl and Ms. Kokinda?

A. That's correct.

Q. Who's this individual here?

A. I don't know.

Q. Isn't there someone else standing in the background back there?

A. May I look at the true copy? Yes, there is somebody back there.

Q. Do you know who that is?

A. It looks like the Postmaster of Bowie.

THE COURT: With the arms folded, that person.

MR. PEMBROKE: It seems like the arms are folded in this picture.

THE WITNESS: The next picture, B-2 is a different shot.

Q. Is that the same individual?

A. Yes, it is.

Q. Directing your attention to the top picture on Exhibit B-1, can you identify anyone in the photograph?

A. From your copy, no, I can't.

Q. Can you tell how many people even though you can't identify them are in the picture?

A. From that copy it appears that two people are in the picture.

Q. You indicated that on the bottom copy of B-1 that this is [26] you standing there?

A. That's my back, yes.

Q. Okay. And the third person or actually the unidentified person carrying a soda bottle there?

A. Yes.

Q. In tennis shoes?

A. Yes.

Q. Okay. There appears from this photograph that there's adequate room for them to get by, isn't there?

A. Yes, from that photograph.

Q. Now directing your attention to the bottom photograph of B-2, would you say that this photograph is similar to the bottom one on B-1?

A. It's similar, yes.

Q. And does it also indicate that there is adequate room to pass by on the sidewalk?

A. I think—I think a person—I would have had to move in order for a person to get past without touching me.

Q. Do you know how wide the sidewalk is there?

A. No, I don't.

Q. Could you estimate if you don't know specifically?

A. Yes.

Q. You've seen it?

A. I've seen it.

Q. What would—how wide would you say the sidewalk is?

[27] A. Four feet.

Q. Four feet wide?

A. Yes.

Q. I direct your attention again to the top photograph of Exhibit B-1?

A. It's B-2.

Q. I'm—excuse me, thank you, B-2. There's a mail box in that picture, isn't there?

A. Yes, sir.

Q. And the mail box is located on the sidewalk?

A. I would say it is located on the sidewalk, yes.

Q. And from what you can tell in this photograph would you say that the table in the picture is approximately protruding onto the sidewalk as far as the mail box is?

MS. WEISMAN: Objection, your Honor. I believe outside I spoke with my director and I don't see why it is relevant in this hearing.

THE COURT: The exhibits are introduced and the witness can explain. Overruled.

MR. PEMBROKE: Thank you, your Honor.

A. Yes, it is.

Q. I direct your attention to Exhibit D. This is a copy of Poster 7, is that correct?

A. That is correct.

Q. And this is what you show—what you showed the [28] defendants?

A. That's correct.

Q. As a postal inspector you I believe testified on direct examination that you were responsible for conducting investigations into possible postal violations?

A. That's correct.

Q. So you're familiar with the—with the soliciting laws, is that a fair statement?

A. That's a fair statement.

Q. To whom does it apply?

A. To anyone.

Q. Would you—let me ask this. Who is prohibited from soliciting?

A. The regulations identify certain class of individuals who can solicit. Anyone else is prohibited.

Q. Do you know what class of people are allowed to solicit?

A. I believe federal employees at certain times, but I'm not really sure.

Q. And all others are prohibited?

A. That's correct.

Q. And who is—is there a class of individuals who may not be soliciting under the statute?

A. I don't know.

Q. Is it—is it your understanding of the regulation, Inspector, that neither employees nor patrons may be solicited?

[29] A. That's correct.

Q. Unless the soliciting individuals belong to this classification?

A. That's correct.

MR. PEMBROKE: The Court's indulgence.

Q. Inspector Cochran, how do you know or do you know that the defendants do not belong to that classification of individuals that are permitted to solicit?

A. They had not received the authorization from the manager or Postmaster at the facility. The Postmaster would have determined if they were in that class of individuals who could.

Q. So it's up to the Postmaster at each individual Post Office?

A. It was my feeling at the time that he had not made that determination, therefore they were not legally on postal property.

Q. Is it a fair statement to say that the regulation permits each Postmaster to make a determination of that?

A. I don't think they can make that individual determination, no. I don't think it's personal.

Q. Then if the Postmaster cannot make that individual determination and you determined that particular Postmaster of Bowie had not, why would that indicate that they were not authorized?

MS. WEISMAN: Objection, your Honor.

THE COURT: If he can answer. Do you understand the [30] question?

THE WITNESS: No, sir.

Q. Well it's really I guess basically a two-phase question. You indicated, I believe, and you can correct me if I'm wrong that your testimony is that the individual Postmaster at a particular Post Office cannot make the determination of who would be authorized. The preceding answer was that it was your understanding that the Postmaster at Bowie had not made such a determination. So my question is that if the Postmaster can't make it and the Postmaster at Bowie had not made it, why did you feel that that was justification or why did you feel that they weren't authorized since the Postmaster can't authorize it in any event?

A. I think the Postmaster can make that determination and I felt that these people did not fit into that class of individuals who could make solicitations on postal property.

Q. Are you authorized to make such a determination?

A. No.

Q. Then you're saying it was your personal opinion that they didn't fit into this classification?

A. After discussioin with the Postmaster I felt that they did not fit into that classification.

Q. Directing your attention once again to Exhibit A which is the diagram of the—of the Post Office itself, how many entrances are there to the Post Office?

[31] A. Two I believe, the front entrance and then there should be a rear entrance.

Q. Would the front entrance be at this point here just to the left and up of the C of—

A. Canopy, yes.

Q. —canopy?

A. Yes.

Q. What would this opening over here to the upper right of R, can you tell?

A. That may be another entrance. I don't know.

Q. I have here a photograph I would like you to identify if possible.

A. That is—

Q. Would you identify it please?

A. That is a photograph of the Bowie, Maryland Post Office taken from the front of the building.

Q. And do you believe it's a fair statement to say that that's the way the Post Office looked on August the 6th?

MR. PEMBROKE: I'd like to have this marked as Defendant's Exhibit A for purposes of identification.

THE COURT: Government?

MS. WEISMAN: No objection.

THE COURT: All right. It'll be received in evidence.

[32] Q. And how many entrances does the photograph show?

A. The photograph shows two entrances.

Q. And on the photograph, if you would, would you indicate to the Court approximately where the table was set up?

A. There's a small, I believe, Ford parked in front of the building. The table was set up between the mail box and the first pole to the right of the mail box.

Q. And could you estimate how far that is from the door?

A. I would say it's five to six feet from the door.

Q. How about from the opposite door?

A. From the other door maybe 15 to 20 feet.

Q. Then since there are two entrances and/or exits, is it a fair statement to say that someone wouldn't necessarily have to go past the table in order to go in and out of the Post Office?

A. I personally have never entered the door that's to the far right in your photograph. I don't know if it's a—if the door is open or if it's in use.

Q. All right. Would you—if this photograph includes it, would you position—would you indicate where you were positioned when you heard the conversations between the defendants and the other individuals on that day?

A. Okay. I parked on the far right in the photograph.

Q. Around the corner?

A. Around the corner and walked around and stood basically in this area, maybe even a little closer.

[33] Q. What would you estimate to be the distance?

A. Ten feet, eight to ten.

Q. Could you identify this?

A. This also appears to be a photograph of the front of the Bowie, Maryland Post Office.

MR. PEMBROKE: I would like this marked as Exhibit B for purposes of identification.

Q. I direct your attention to the—to the sidewalk in that picture. You had indicated earlier in response to my question that you thought the sidewalk was approximately four feet wide. How wide do you think the sidewalk is as depicted?

A. It appears to be larger than four feet.

Q. Substantially larger?

A. Maybe another two feet.

THE COURT: It's less than seven.

MR. PEMBROKE: Your Honor?

THE COURT: It appears to be less than seven. I say that only because the Government's Exhibit on the site plan—

MR. PEMBROKE: Indicates it as seven.

THE COURT: —has a schematic of seven somewhere up at the top. If you measure it and bring it down it looks like it's somewhat less than seven.

Q. And approximately if you can judge from this photo, how much distance would you—would you estimate between the edge of the sidewalk and the bottom picture of Government's Exhibit [34] B-1 and the edge of the table?

A. I'd say three feet.

Q. I'd like to direct your attention to Government's Exhibits—Exhibit 4 for purposes—marked for purposes of this hearing. You indicated that you found this on the table?

A. That's correct.

Q. And it was part of the property seized?

A. That's correct.

Q. Did you see this form executed?

A. No, I did not.

Q. Is there a date on it?

A. No, there's not.

Q. So you really have no way of knowing when the information was filled out, do you?

A. No, sir, I don't.

Q. Or under what circumstances and for what purpose it was filled out, is that a fair statement?

A. That's a fair statement, yes.

Q. I direct your attention to Government's Exhibit 5. That's also a credit card receipt?

A. Yes, it is.

Q. That's not filled out at all, is it?

A. That's blank.

MS. WEISMAN: Objection, your Honor, as to relevance of these questions.

[35] MR. PEMBROKE: Your Honor, he indicated that he arrested these people for attempting to solicit. This evidence was seized—

THE COURT: That will come in at the time of trial, guilt or innocence.

MR. PEMBROKE: Yes, your Honor, but I think that it has some bearing on what he saw and what he didn't see in terms of making this probable cause determination to arrest them for the crime of soliciting.

THE COURT: I think he's clear. It would be obvious that he could not see as I understand his testimony actual line entry or items, but that he saw in general the items which have been received for purposes of the motions here which might be described generally as book, booklets, things that would look like a receipt with that same—

MR. PEMBROKE: Right, I understand.

THE COURT: —with what they are at this point.

MR. PEMBROKE: What's I'm attempting to establish, your Honor, is the fact of exactly what the materials were doing on the table because that, I believe, does go to the weight of probable cause to arrest them for soliciting. Just because books are on the table, just because other forms are on the table does not necessarily give rise to probable cause in and of themselves by their mere presence.

[36] THE COURT: That's legal argument. He's made his factual presentation of what he saw and obviously what he couldn't see from his vantage point.

MR. PEMBROKE: Very well. Then I just have a few other questions, then.

Q. Inspector Cochran, did you see any money change hands?

A. No, I did not.

Q. You testified that you overheard conversations between the defendants and other people?

A. Yes.

Q. If you would indulge me for a minute, would you again indicate what those were, what the nature of the conversations were?

A. They would start it out by getting the people's attention by saying something to the effect of are you interested in crack, do you want to stop drugs and when the person slowed down they start talking to them about the publications they had on the table.

Q. All right, thank you.

MR. PEMBROKE: No further questions.

THE COURT: Any redirect?

MS. WEISMAN: A couply of questions, your Honor.

REDIRECT EXAMINATION

BY MS. WEISMAN:

Q. Now, Inspector Cochran, what did the defendants say con[37]cerning the publications on the table?

A. They were attempting to get people to subscribe to the newsletter and/or purchase the publications that were on the table.

Q. Can you be any more specific as to what Mr. Pearl or Ms. Kokinda said?

A. Yeah. If you are interested in learning more about getting rid of these problems in the country then you should be aware of some of the things that are going on and our publications will advise you.

Q. Now I'd like you to read paragraph four of Poster 7. It refer to soliciting. Can you read what it says after soliciting arms?

A. Soliciting arms and contributions, campaigning for elections to any public office, collecting private debts,

commercial soliciting and vending and the display and distribution of commercial advertising on postal premises are prohibited.

Q. Now, who is—whom do you grant permission to set up a table on postal service grounds?

A. During the federal campaign certain funds are solicited during that period of time. I've never seen a table in front of the Post Office.

THE COURT: What do you mean by federal campaign?

THE WITNESS: United Way is—

THE COURT: Charitable campaign?

[38] THE WITNESS: Charitable.

THE COURT: Not a political?

THE WITNESS: No, charitable campaign.

Q. And to your knowledge has the Post Office ever let somebody set up a table on Post Office property?

A. I have never seen it.

Q. How about the Girl Scouts?

A. I have never seen it.

Q. The heart fund?

A. Not to my knowledge.

Q. Now, I'd like you to look at this letter that I'm going to entitle Exhibit—Exhibit F. Do you know what this two-page letter is?

A. It's a letter from the Regional Chief Inspector who's located in Valley Kenwood, Pennsylvania, subject violations of Poster 7.

Q. And what does it direct the Postal Inspector to do concerning allowing somebody, some organization to set up a table on postal property? Is there any reference in that letter or giving you guidance as to when you can let somebody set up a table?

A. It basically says we cannot give—allow people to set up tables.

Q. Would you read number one, would you just read it please?

A. "The Postal Service should never grant prior approval for [39] any organization to distribute literature, solicit signatures, et cetera, on postal property."

Q. And do you understand that to be a directive to you and your colleagues?

A. Yes, I do.

Q. Now, did Mr. Poe—Mr. Poe is the Postal Inspector at that Post Office?

A. He is the Postmaster of that Post Office.

Q. Postmaster, I'm sorry. Did he tell you that he wanted Ms. Kokinda and Mr. Pearl to remain on the Post Office property?

A. He did not indicate that.

Q. What did he say?

A. He wanted them to leave postal property.

Q. Now you've seen a photograph that was introduced by the defendant showing two entrances—two front entrances to the Post Office?

A. That's correct.

Q. How many entrances does the public use do you know?

A. I believe it uses one.

Q. And is that the one to the right or the left of defense photographs?

A. Facing the photograph it would be to the left.

Q. And did you see—during the time you were there did you see people go in and out of the Post Office?

A. I did not. Oh, yes, I did.

[40] Q. Which door did they use?

A. The door to the left.

MS. WEISMAN: I have no further questions.

THE COURT: Any recross for purposes of the motion?

MR. PEMBROKE: Just briefly, your Honor.

RECROSS EXAMINATION

BY MR. PEMBROKE:

Q. Inspector Cochran, you indicated that – you said with reference – with reference to the two entrances?

A. Yes.

Q. How often do you go out to the Bowie Post Office?

A. I've been there maybe three times this year.

Q. And your testimony was that you yourself have never used the other entrance?

A. That's correct.

Q. Would it be a fair statement to say that you don't know how often any other door is used?

A. That's correct.

MR. PEMBROKE: Nothing further, your Honor.

THE COURT: Do you know what the physical layout is behind the two doors, lobby or boxes or counters or offices?

THE WITNESS: The door to the left will allow you to get to the counter line. I don't know where the box section is.

THE COURT: What about the door to the right?

[41] THE WITNESS: I don't know.

THE COURT: Thank you, Inspector. You can stay with counsel or stay at counsel table.

(Witness excused.)

MS. WEISMAN: That's all the testimony that we have for purposes of the motion hearing.

THE COURT: It would seem to me that the decision to make the arrest was based on the Inspector's determination and the Maryland trespass statute as well as the regulation, that no lawful business was being conducted, that is Postal Office business. But that your argument to that, that is – correct me if I'm wrong, if it's First Amendment constitutionally protected activity it is in fact lawful business.

MR. PEMBROKE: Yes, your Honor. I believe that that issue is dispositive of *Anderson v. State* clearly points that out.

THE COURT: Reading some things under the *Anderson*. So that's why you're saying your motion to dismiss is really intertwined with the motion –

MR. PEMBROKE: Yes, your Honor.

THE COURT: – motion to suppress and I guess I would accept that because the whole thing is either – point me to any other area but I would see nothing legally wrong with the arrest and seizure citing Fourth Amendment grounds based on the factual presentation made –

[42] MR. PEMBROKE: Your Honor –

THE COURT: as to the warrantless arrest and the seizures incident to the arrest in what we call the traditional grounds. But it's going back to saying that they had – your argument is that there is no crime being committed. There's no crime being committed because they were only engaging in constitutional protected activity.

MR. PEMBROKE: That's part of the – that's part of our grounds. Your Honor, the other grounds is it's our contention, your Honor, based on the testimony that we heard that there was certainly no probable cause to arrest on the basis – of course on the trespass statute because there was – I don't believe there was facts sufficient to establish probable cause that they were disruptive of or disturbing to the business of the Post Office. There was no indication that anybody didn't go into the Post Office because these people were here. There was no indication that there was an altercation of any type between would-be patrons and the defendants.

THE COURT: Isn't it set in the either/or that you don't have to make a finding of probable cause for acting in dis-

rupting manner or disturbing, if the first part is true, that they have no apparent lawful business?

MR. PEMBROKE: That's correct, your Honor. As you pointed—

THE COURT: That goes back to the whole—

[43] MR. PEMBROKE: First Amendment.

THE COURT: —First Amendment—

MR. PEMBROKE: Yes, sir.

THE COURT: —so that unless the Government is saying otherwise as I followed the testimony it's not at least for the purposes of the—presenting their evidence, answering your motion to suppress is that they were that disruptive or disorderly. It's in fact that they had no postal business on the place and had been asked and were asked to leave and did not leave is a shorthand—

MR. PEMBROKE: Well I think that's probably the Government's position. Of course once again our position is, your Honor, that even setting up the table, I believe that the Government has conceded perhaps not in this motion but certanly in other cases that the free distribution of literature is not prohibited and it is constitutionally protected activity. On the basis of that, your Honor, unless the Government is going to put on evidence that they were attempting to sell and they would not have freely distributed anything, I think that indicates that they do have—that they're engaged in constitutionally protected activity at that time at the location and that gets us through the first hurdle. Notwithstanding the fact that solicitation may or may not be a problem, I think that establishes that they were involved in a lawful activity, that they may have been involved in lawful ac[44]tivity and there has been no evidence adduced they were not, that this literature or this material was only, was only for purchase, that it would not have been given away free for the asking and that establishes the grounds.

THE COURT: That nothing came to this Inspector's senses that there was at least probable cause to believe that solicitation was going on in his presence?

MR. PEMBROKE: Your Honor, the statute says—

THE COURT: That's the lawful business, so you'd have to find the Post Office prohibition of soliciting.

MR. PEMBROKE: Yes, your Honor.

THE COURT: Isn't there enough here taking everything as a whole with what this witness saw, heard at that time and place to establish that there was probable cause that a violation of this—

MR. PEMBROKE: Well, your Honor—

THE COURT: —facially—presumed facially—

MR. PEMBROKE: I would submit, your Honor, that—

THE COURT: —that this regulation was being violated?

MR. PEMBROKE: No, your Honor. I would submit that if you look at the—you look at the statute, the statute prohibits certain types of soliciting and I would submit that the evidence adduced at the hearing does not establish probable cause to believe that any of the prohibited types of soliciting [45] occurred. I don't believe that there was any evidence of soliciting arms and contributions. I don't believe that that was the situation where they just said give us money. I don't—there's been no allegation and no evidence adduced at this hearing that they were campaigning for election to any public office. They may have been speaking about certain issues but they weren't campaigning nor were they indicating that they were either personally campaigning or campaigning on behalf of a specifically named individual running for a particular office. I don't believe that there's been any testimony regarding collecting private debts or—and I don't believe that this type of material falls in the category of commercial soliciting or vending or commercial advertising. So I would submit,

your Honor, that there is no probable cause for the arrest and not for the seizure of the material.

THE COURT: So you want to suppress those items based on illegal arrest?

MR. PEMBROKE: Yes, your Honor.

THE COURT: All right, Government.

MS. WEISMAN: Your Honor, police officers may make an arrest if they have probable cause to believe that an offense occurred. We're not at the stage of determining precisely or presenting proof to determine precisely what offense the defendants committed, but simply to show that these—this Inspector and his colleague believe that the defendants were violat[46]ing the law. He received a phone call from the Postmaster saying please come out and help us. We have somebody here who's creating a disturbance. Officer Cochran testified he came there. He stood approximately 10 to 12 feet away from the defendants and he heard the defendants offering for sale certain literature, some of which has been introduced in this Court. Now is there probable cause to believe the offense occurred? We submit that that is sufficient to show probable cause. The officer heard the defendants. He had received this prior information from somebody else and admittedly it is hearsay but we're not at the stage of proving the offense occurred; we're simply at the stage of deciding did Inspector Cochran have probable cause to believe an offense was occurring.

In addition—

THE COURT: What is an offense from the Government's—

MS. WEISMAN: It may be any offense. I mean police may arrest somebody for parking violations. If they find heroin as a result of that arrest, I was just reading a District Court opinion, I forget what case it was, that said they don't have to charge for that.

THE COURT: Well, that'a truism but the first offense has to be discernible.

MS. WEISMAN: Your Honor, we—

THE COURT: You may find heroin but if you found it [47] because you were arresting for looking at the sky, it's going to fall.

MS. WEISMAN: That's true, your Honor.

THE COURT: So what is the offense? There's no question in my mind—

MS. WEISMAN: The offense—

THE COURT: —part B is here, that these people who were doing something. All right.

MS. WEISMAN: The offenses—

THE COURT: You mean that there'd have to be prooable cause that an offense was committed and that these defendants were the ones committing it. I don't think there's any problem in that. But I'm just interested in what the Government is saying is the offense that the arrest was made.

MS. WEISMAN: The offense—

THE COURT: Not necessarily the one charged, but what is the offense?

MS. WEISMAN: They were soliciting contributions and selling literature and we submit that Officer Cochran's observations, what he saw, what he heard and what he had heard from Postmaster Poe was sufficient to give him probable cause to believe that. It was also sufficient to give him probable cause to come up to the two defendants and say you've got to leave. You don't have any business here. You're disturbing people. And when they refused to go, your Honor, we submit [48] that that was an additional offense that occurred in their presence and it was after that that the defendant—that the defendants were actually placed under arrest.

THE COURT: Any response?

MR. PEMBROKE: Your Honor, the evidence is clear at least at this point that Inspector Cochran did approach them and did tell them that they had to leave and for whatever reason that they did not. However, I would again submit to your Honor that if they have a lawful right to be there then the authorities, the Postal Inspectors have no right either to exclude them from the premises or to arrest them. Once again I would simply say that in the context of the testimony here and in the circumstances that their activity was simply not covered by the prohibitions of the regulation. Therefore their arrest was unlawful and therefore the resulting seizure is also unlawful and the evidence must be suppressed because he didn't have probable cause.

THE COURT: Very well. Listening to the testimony of the Government's sole witness, the Post Office—the Postal Inspector, including but not limited to the fact of the statement made to him in connection with his official duties, albeit hearsay admitted for the purposes of this hearing, and what he physically observed and heard at the locaton in Bowie on August 6th for the minutes that he was there, it would appear to me and I find as a fact that he had probable cause to [49] believe at that time that the offense of soliciting contributions was being committed then and there in his presence and that these two defendants were jointly and severally committing that offense and so that the arrest is legal and that the resulting search incident to that arrest was a warrantless search is lawful in that the fruits from that warrantless search being various documents may be admitted in any trial on the guilt or innocence on the appropriate charges.

In passing on which obviously goes to the whole broader determination on the constitutionality, it is not really addressing because that addresses really on guilt or innocence in my way of trying to analyze or structure the

proceedings. So that really at this point the only thing is a that if there is a trial, evidence seized at that time on August 6th otherwise material relevant may be admitted over objection that it was seized as a result of a warrantless search and seizure.

Now, having heard that testimony, is there any more you wish to—well, then it's your—now we're back to defense. Do you wish to proceed on additional testimony before any trial on guilt or innocence on the entire motion to dismiss as a result of illegal and unconstitutional statute or regulation?

MR. PEMBROKE: Well, your Honor, I would like to argue on the motion to dismiss.

[50] THE COURT: All right. Do you need other facts?

MR. PEMBROKE: No, your Honor. If I might, I have for the last several days I've been suffering with a slight bout of the flu. I tend to dehydrate. I'd just like a brief pass to go out and get some water.

THE COURT: No question. We'll take a stand up—

MR. PEMBROKE: Thank you, your Honor.

(Recess.)

THE COURT: All right. We're back on the record to hear argument. Let me say with respect to the Maryland statute unless you have something more recent than *Anderson* you'd be hard pressed in the highest Court of Appeals with cert denied has held the trespassing statute is at least facially constitutional to make any ruling contrary.

MR. PEMBROKE: The only thing I would like to address to the Court is the Court's referring to *Anderson* and *Anderson* if I'm not mistaken the subsection that was held to be unconstitutional—excuse me, held to be constitutional does not contain the challenge language that we have here. The terms that we are objecting to—

THE COURT: Lawful business wasn't at issue?

MR. PEMBROKE: No, your Honor, we're not – we're challenging – we're challenging the – well that was – the lawful business part was what was held there. We're not challenging that.

[51] THE COURT: If the person – if the surrounding circumstances are such to indicate to a reasonable person such person has no apparent lawful business and they have to meet head on the fact whether the conduct was or was not lawful business. Isn't that what you're saying?

MR. PEMBROKE: No. We're challenging the disruptive and – disruptive of and disturbing to conduct of business. Now those words are not contained in that subsection of the statute, otherwise I would agree with your Honor.

THE COURT: Count Three under the superseding information is refusal to leave after acting in a manner disturbing to the conduct of normal Postal Service business.

MR. PEMBROKE: The Court's indulgence.

THE COURT: All right. So you you'd have to – and there's no –

MR. PEMBROKE: Well, then the –

THE COURT: – no Appellate ruling on what conduct of normal business means. We know what – generally what disorderly or disturbing conduct is.

MR. PEMBROKE: Generally. I don't know believe the issue's ever been decided within any degree of clarity. I would just point out that if I'm not mistaken Inspector Cochran's words were that the other – the Postmaster had called him saying that someone was being annoying. The question would be does annoying rise to the level of disruptive or [52] and disturbing to.

THE COURT: That's guilt or innocence. Right now you're saying the statute is so facially defective regardless how it's applied or construed that it's unconstitutional

because it bring within its gambit conduct which is otherwise constitutionally protected.

MR. PEMBROKE: Yes, your Honor. And with the exception of identifying our beliefs an authorized employee without any type of guidelines whatsoever it leaves it basically up to the discretion of that person to arbitrarily decide what is disturbing and what is disruptive and that could vary from Post Office to Post Office depending on who's making the determination. And the cases we cited, the *International Society* the Court found that similar terms hamper or impede was unconstitutionally vague because it did – it didn't indicate what activities were really – were really prohibited. Here, once again, what type of activity has to raise to the level of being disruptive of or disturbing to. What does it take to be disturbing? Is it the fact that people may have to walk one foot out of their way and around the table? Is that disruptive of or disturbing to? Does it require that the entire sidewalk be blocked off by the table in order to do that? Does it require that the Post Office show that or the business show that they lost money or patrons or customers? There's absolutely no guidelines whatsoever. It's totally arbitrary [53] based on who is making the determination.

And as I say, even limiting the discussion to Post Offices, that allows whomever the authorized employee is going to be, be it an Inspector, be it a Postal Clerk, be it the Postmaster, to make a decision based – to make basically a subjective decision based on what they feel and it could vary depending on who's making it and where. It could even vary from Post Office to Post Office or in the same Post Office daily depending on who makes it.

THE COURT: Given that this subsection is limited to activity going on during regular business hours, I don't find it so vague that it could not – people of normal intelligence couldn't arrive at a meaning what would be pre-

scribed, what would be disruptive and disturbing to the conduct of normal business or whatever the agency was all about as to give—as to give notice and not so vague as to make selective enforcement as you suggest inevitable although it would—could it be written with more clarity. Perhaps, but number one adopting the first cardinal principle that you don't lightly strike down duly enacted measures as being unconstitutional when any rational interpretation could save them. It would appear to me that that section would meet the test that it is certainly constitutional and it gives proper notice and is not so vague to invite arbitrary enforcement or selective enforcement when reading the subsection as a whole. So that disruptive cer[54]tainly as, limited and disturbing certainly are words of origin and not just general words taken—incorporated in the statute.

In Maryland, the Maryland statute to facially pass as constitutional muster. The Post Office regulation has a problem because in its own terms Poster 7 allows solicitation, is that what you say, by specifically, as to set up now an entirely different tact or equal protection or what the argument is that the solicitation of federal, military and civilian personnel for contributions are authorized.

MR. PEMBROKE: Yes, your Honor.

THE COURT: But not the solicitation of federal, military, civilian personnel and the public for contributions to LaRoche.

MR. PEMBROKE: Or to anyone else or for anyone else.

THE COURT: Or to anyone else. But here in this case as to these—

MR. PEMBROKE: Yes, your Honor, as to these particular—

THE COURT: —as to these people—

MR. PEMBROKE: Or for their particular causes as the case may be.

THE COURT: Although that's limited that it has to come within the restrictions of the manual of fundraising. The manual for fundraising in turn at page 11 suggests that [55] solicitation may be made of worthy voluntary agencies at entrances to federal buildings normally open to the general public. The head of the agencies may authorize this privilege at this discretion. That's the mist that you're complaining about?

MR. PEMBROKE: Yes, your Honor.

THE COURT: That can't be first impression. Have either of you addressed that to either the District Court, U.S. District Court hearings or Circuit Court hearings?

MR. PEMBROKE: Your Honor, I was not able—I was not able to find anything that addresses this particular issue certainly as it relates to Post Offices or as it relates to anything else. I think probably the reason for that is we're dealing with an executive order and the executive order cited in Poster 7 is outdated. Apparently what happens is as each new President comes in he issues a new set of executive orders so that the actual number is a little bit different although the gist of what it allows which is—which is through the manual to allow for certain agencies to solicit is still allowed.

The—not to be presumptuous but in the other cases which have—some of which have been cited in dealing with predominantly with other issues the justification for the regulations and the limitation on the exercise of First Amendment freedoms has been to—has been to increase the flow ef[56]ficiency at the Post Office, not to slow things down, disrupt or distract the employees and this sort of thing. I frankly although believing wholeheartedly that the authorized agencies are certainly worthwhile endeavors I feel—

THE COURT: We don't get into that. We can't get into that.

MR. PEMBROKE: Well I just fail to see–

THE COURT: In a content neutral.

MR. PEMBROKE: I fail to see the distinction, your Honor. I don't see where the Government interest is any greater or less depending on the group that is allowed or not allowed to solicit. I think the same concerns need to be raised.

THE COURT: Well, I think there's a difference if they limit it on Post Office property you may solicit Postal Service employees to participate in coordinated consolidated federal campaigns. I think that's a rational–

MR. PEMBROKE: Under–

THE COURT: –distinction.

MR. PEMBROKE: Well under the regulation the defendants would have likewise been arrested had they attempted to solicit employees of the Post Office as opposed of or in addition to the allegation of its patrons. I don't believe that that limitation cures the concern. If anything I would suggest that that makes it worse. If the Government–the Government [57] certainly has a valid interest in upholding the efficiency of the Postal Service I would think that if you had a choice vis a vis efficiency of soliciting patrons or employees, I would think it would be–have a less impact on the efficiency of the business of the Post Office to solicit patrons as opposed to employees. Yet the regulations allow for the solicitation of employees by certain organizations and thereby excluding others.

THE COURT: Well, that's not before me. If there was somebody else attempting to target postal employees, that may be a perfect argument coming up that they said yes to United Way and no to Red Cross or yes to somebody and no Planned Parenthood. I mean you can set scenarios for employees. I think it is a rational basis to say that just on

Post Office property postal employees only may be solicited because obviously you're not–if you're not in that group that's coming for that purposes is coming to work then you're going to come unhindered as you pick up your mail or buy stamps or whatever. You're not targeted at all for any group. The only thing that worries me here is that this–they allow the solicitation of federal, military and civilian personnel as authorized by the manual and the manual says they may be solicited, the they being non-postal employees if I'm right in that distinction and if I'm wrong it's even more–assuming there is a valid distinction there that you may solicit federal, military and [58] civilian personnel or non-Post Office employees at installations normally open to the general public. Why can you make that distinction and then yet exclude these people or anyone else who doesn't fall in that category? Therefore the regulation on its face is unconstitutional. That they were there for–if that's true they were there on legitimate business and therefore the order to move is irrelevant if not unlawful and their continuing to do that type of lawful business is lawful. Maybe I'm–but I just can't imagine that that wasn't addressed because you both did such good research on the U.S. District Court cases and Court of Appeals cases. I thought we were going to get into a property analysis quite frankly.

MR. PEMBROKE: As I said, I–

THE COURT: Of general public, limited public.

MR. PEMBROKE: I endeavored to–I have not found any case that deals specifically with that or the updated executive orders that relates to the manual. It's quite possible that in the general property analysis that no one–no one has ever raised the issue of that–of that regulation and the executive order.

THE COURT: Ms. Weisman, is Poster 7 the code of federal regulations?

MS. WEISMAN: It's word the same, your Honor, but perhaps I can direct the Court's attention to Executive Order 10927 which is on the inside front cover of Exhibit E-1.

[59] THE COURT: Of E-1?

MS. WEISMAN: Yes.

MS. WEISMAN: It allows the Chairman of the Civil Service Commission to make arrangements for such national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate to solicit funds from federal employees and members of the Armed Forces at their places of employment or duty stations. I suggest that the regulation was written simply to track that language since the reg—since the Executive Order refers to military and civilian personnel, that was the language that was put into the regulation itself. But that regulation is perfectly rational. It refers—we submit that it is rational to treat a person at his place of employment differently from somebody—the public at large who's attempting to do business at their will.

THE COURT: I agree. If I'm wrong in that, that would be to the defendants' favor, but that's just a legal—a legal argument.

MS. WEISMAN: And—

THE COURT: But it just seems that it goes one step beyond that unless you're saying—you're saying other federal, military—

MS. WEISMAN: Well there are Post Offices—

THE COURT: —and civilian personnel—

[60] MS. WEISMAN: Yes.

THE COURT: —still has to be at their duty station?

MS. WEISMAN: That's what the Executive Order makes very clear. I suggest that it is not obsolete. It's virtually impossible to find. Inspector Poe's probably the only person in the world who found it. But that's the

language that it uses. I think that the Government at that time, the President at that time was trying to set up something where people could be given the opportunity and asked to contribute at their place of business. It specifically says at their places of employment or duty stations and then the whole manual is designed to place all sorts of limitations upon such behavior to make sure that people can go about their employment and do their jobs.

THE COURT: You're saying a fair reading then taking everything in a whole would be that it would not be permissible to solicit non-postal employees at the Bowie Post Office?

MS. WEISMAN: I think that's absolutely clear. The United Way couldn't set up a table at the Bowie Post Office to solicit anybody and to solicit employees must be done within certain very specific guidelines.

THE COURT: That was the only special thing, as I keep reading and rereading, that seemed not to be answered by the Supreme Court cases and the Circuit cases which as I read, correct me again if I'm wrong, then brings us down to whether this particular sidewalk, the character of this particular [61] sidewalk. It's the defendants' position that it's general public property. Therefore the broadest interpretation of the First Amendment applies and only the narrowest restrictions may be placed.

MR. PEMBROKE: Right, your Honor, that it's traditional public.

THE COURT: Traditional public—

MR. PEMBROKE: Excuse me, your Honor. I take it then that the motion is denied on the equal protection argument?

THE COURT: Yes.

MR. PEMBROKE: Thank you. With respect to—

THE COURT: And then—but that really then leaves—well, are there any other factual matters to be

brought out? Because in turn then really – we're jumping in really to a trial and guilt or innocence determination.

MR. PEMBROKE: The only thing is just based on the law for that last issue. We submit that it is for the reasons that we've stated. The Circuits apparently at this point in time are split. Some decide – go with the *Grace* line of thought, some go with the *Greer* line of thought. We believe as set forth in our memorandum that there are substantial distinctions between considering a Postal Service premise along the same lines as a posted military reservation. We believe it's much more analogous to the sidewalk surrounding the Supreme Court, particularly in light of the fact that this sidewalk [62] must be used by the people. It's not – not a matter of discretion. This is the sidewalk that must be used for ingress and egress and to say that they can exercise their rights somewhere else is not – is not sufficient. That was set forth quite clearly in Justice Marshall's concurring opinion in *United States v. Grace* where he said one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place. Our contention is that the defendants have a constitutional right to be on the Postal Service premises and that it is not an appropriate alternative channel of communication to say they can go on the public street or across the street or somewhere else to do it. I believe that everything else I would say would just be a reiteration of what's in the motion.

THE COURT: Let's see now. The trial then, the motions have been denied, rulings against the defendant, at the trial, does the Government have any other witnesses?

MS. WEISMAN: Yes, your Honor.

THE COURT: You do. All right. Any problem for the first witness adopting what the Inspector said in the motions hearing?

MR. PEMBROKE: No, your Honor.

THE COURT: The Government?

MS. WEISMAN: No.

THE COURT: So now we're at the trial and really is [63] the Government's first witness in lieu of recalling the Postal Inspector, by agreement of counsel that testimony has just heard at the motions hearing will be adopted and incorporated at the trial as Government's first witness and the exhibits received at the motions hearing will be reentered at the trial of this matter. Now for their second witness?

MS. WEISMAN: We call Mrs. Wyatt.

JANET WYATT, GOVERNMENT'S WITNESS, SWORN.

DIRECT EXAMINATION

BY MS. WEISMAN:

Q. Ma'am, would you please state your name and address?

A. Janet Wyatt. My address is 3702 Chapel Forge Drive in Bowie, Maryland.

Q. Now, Mrs. Wyatt, are you familiar with the Bowie Post Office?

A. Yes.

Q. Where is that located?

A. It's located on Route 197.

Q. And is that Post Office a Post Office that you use?

A. Yes.

Q. Now I'd like to direct your attention to August 6th, 1986. Were you at the Post Office that day?

A. Yes, I was.

Q. And when you got there, where did you park?

A. I parked in the parking right in front of the building. [64] There are 15 slots right in front of the building.

Q. And did there come a time that you saw some people at a table in front of the building?

A. Yes, when I pulled up to park. Generally the parking there is pretty much at a premium and you often have to wait for a spot. And as I recall I had to wait for someone else to pull out in order to get a spot and while I was waiting I noticed that there were people, two individuals with a table and with materials on the table as well as a number of signs that were posted around the table.

Q. And do you see either of those people in the Courtroom today?

A. Yes, I do.

Q. Can you please identify them?

A. The gentleman sitting there and the lady sitting in the middle between the two gentlemen.

Q. Now I'd like you to look at what's been marked for identification as Government's Exhibit Number 21. Do you recognize what that's a picture of?

A. Yes, that's the Bowie Post Office.

Q. And is that—did you see that table that day on August 6th?

A. Yes.

Q. And is that a fair and accurate picture of where it was located when you got there?

[65] A. Yes, to the best of my recollection.

Q. Approximately what time did you get there?

A. I think it was shortly before lunch time.

MS. WEISMAN: Your Honor, we offer Exhibit 21 into evidence.

THE COURT: Any objection?

MR. PEMBROKE: No objection.

THE COURT: Received without objection.

Q. Now, did you—what if anything did you see or hear either of the defendants doing at the Bowie Post Office?

A. Well, as I parked, they were—and got out of my vehicle, they were talking to an individual and both—the gentleman had pamphlets in his hand and was either offering them or talking about the pamphlets and in order to get by them I had to sort of step down on the curb and down off the sidewalk down onto the curb and step back on as I got around them and into the Post Office.

Q. And did you hear any of the conversation that he was having with the person?

A. No. I can't recall.

Q. Now, what happened when you got inside the Post Office?

A. Well I surprised. I had never ever been the Post Office when there was a table of materials and two individuals there offering information or soliciting for—

MR. PEMBROKE: Objection.

[66] THE COURT: Basis?

MR. PEMBROKE: She said soliciting. She indicated she didn't hear any conversations.

THE COURT: Sustained.

A. Well, I had never seen a table with people there before. So when I walked in I asked the clerk, you know, who is that and gee, I thought it was—I said to the Clerk I thought it was against federal laws to have a table and offer information and they said it was.

MR. PEMBROKE: Objection.

THE COURT: Sustained.

Q. And did you say anything else to the clerk?

A. Well, I was just surprised and I said we're not allowed to sell Girl Scout cookies there because it's federal property. So I was just surprised that someone was there.

Q. Did you ever stop and look at any of the literature on the table?

A. No.

Q. Did you have any conversation with any of the other people in the Post Office about or hear what anybody else was saying concerning the table out there?

A. They–

MR. PEMBROKE: Objection.

THE COURT: I'm sorry. The question is did you hear what?

[67] MS. WEISMAN: What anybody else was saying concerning the table outside?

THE COURT: Sustained.

MS. WEISMAN: Your Honor, one of the charges is disturbing the conduct of normal–

THE COURT: All right. I'm sorry. I'll reverse myself. Overruled. You can say–first of all you can answer yes or no to what you heard–did you hear anything.

Q. Did you hear anything?

A. Another customer, yes, and I talked and I talked to the Clerk as well.

THE COURT: Where did that take place?

THE WITNESS: Inside the Post Office.

Q. And what did the other customer and you talk about?

A. Well it–

MR. PEMBROKE: Objection.

THE COURT: Sustained.

MS. WEISMAN: I have no further questions of Mrs. Wyatt.

THE COURT: Cross?

MR. PEMBROKE: The Court's indulgence, please.

(Pause.)

CROSS-EXAMINATION

BY MR. PEMBROKE:

Q. Mrs. Wyatt, you indicated that you went to the Post Office [68] did you say around lunch time? When is–could you give us a time frame approximately?

A. I think it was 11 or shortly after.

Q. And your testimony was that you saw the table set up on the sidewalk?

A. Correct.

Q. And that the defendants were at the table?

A. One was standing. They were around the table, yes.

Q. Was–was the table blocking the sidewalk?

A. The table was on the sidewalk, yes.

Q. Was there room to get by the table?

A. Less than a foot.

Q. In other words the table was protruding out onto the sidewalk so there was only a foot between the edge of the table and the edge of the curb?

A. That's–to the best of my knowledge, yes. One individual could pass in front of the table. But if there was someone standing in front of the table as there was, you had to get down off the curb.

Q. Well, what's your recollection in terms of how wide the table was?

A. At least as wide as that table to my best–to the best of my knowledge.

Q. And to the best of your knowledge how wide would you say the sidewalk was?

[69] A. Three feet.

Q. Well, I'm going to show you what has been marked and identified as Defendants' Exhibit A which is the front sidewalk view of the–

A. Right.

Q. –Post Office. Okay. How wide would you say that sidewalk is?

A. It's difficult to say. That looks like a wide angle lens so that it would distort the–

Q. Well, based on–based on the woman who's walking here, what would you–could you hazard a guess at how–how wide the sidewalk might be?

A. It looks wider than three feet.

MS. WEISMAN: Objection, your Honor. The witness has answered.

THE COURT: Sustained.

Q. I show you a copy of what's been marked as Exhibit B-1, the bottom picture. Now is that the table that you saw?

A. Yes, that looks like the table.

Q. Okay. And is this a gentleman standing would you say off to the right and slightly in front of the table?

A. Looks that way, yes.

Q. Okay. And is this an individual walking behind him?

A. Right. But as you can see there are a number of bumpers from the cars that protrude over the edge—into the sidewalk [70] area and it's—because of that it's often required to get down.

Q. Okay. Well, all right.

A. As I recall that's what precipitated me to move.

Q. You're referring—you're referring to this car right here?

A. That's correct.

Q. Okay. But there's still enough room for both this gentleman and this person here?

A. It appears that way, yes.

Q. And I direct your attention to this vehicle that's parked a little ways down?

A. Um-hum.

Q. There's even more room there, isn't there?

A. That's—it appears that way, yes.

Q. Okay. Mrs. Wyatt, on that particular day and at that particular time why were you going to the Post Office?

A. I had to mail a package.

Q. Did you mail the package?

A. Yes, I did, once I went inside, yes.

Q. You weren't dissuaded from going into the Post Office because of the table?

A. No.

Q. You also indicated you did not have any conversations with the defendants?

[71] A. Not as I went in, no.

Q. Did they approach you?

A. When I came out the young lady I think was standing there and had a pamphlet that she was extending and I—

Q. On the way in, talking about on the way in?

A. No.

Q. All right.

A. They were talking with another individual.

MR. PEMBROKE: I have nothing further.

THE COURT: The sidewalk that you testified that you used that day and have used other days, it is just in front of the Post Office as shown—

THE WITNESS: That's correct.

THE COURT: —in the different pictures over here?

THE WITNESS: That's correct.

THE COURT: And is this a freestanding building, the Post Office, as opposed to being connected to another building?

THE WITNESS: I believe it's freestanding.

THE COURT: There are no shops other than it would appear there are some woods around it or something?

THE WITNESS: That's correct, and on one side there's a driveway part of the Post Office.

THE COURT: And do you recall where on Defendants' Exhibit Number 4 you parked this particular day, approximately where?

[72] THE WITNESS: I believe in that spot that's indicated or the one that's got a van-looking vehicle in it to

the right. That's to the best of my recollection. I can't remember exactly where I parked that day.

THE COURT: One of these front spots?

THE WITNESS: That's correct.

THE COURT: Thank you.

MR. PEMBROKE: Your Honor –

THE COURT: Yes.

MR. PEMBROKE: – might I ask one additional question?

THE COURT: Yes.

CONTINUED CROSS-EXAMINATION

BY MR. PEMBROKE:

Q. I show you again what's being marked as Defense Exhibit A and this is the front of the Bowie Post Office?

A. That's correct.

Q. And how many entrances and exits are there to the front of that building?

A. There are two but I think you can only enter in in one fashion. Generally there's an entrance here and an entrance here, but the traffic is directed so that you can only enter in this far right area.

Q. Are both doors open?

A. Yes.

[73] Q. Okay, thank you.

MR. PEMBROKE: Nothing further.

THE COURT: Government?

REDIRECT EXAMINATION

BY MS. WEISMAN:

Q. When you just referred to the word entrances, you were talking about where the cars go in?

A. That's correct.

MS. WEISMAN: I have no further questions.

THE COURT: Thank you. You may step down. You may stay and listen or leave.

(Witness excused.)

MS. WEISMAN: Mr. Poe, please.

LARRY POE, GOVERNMENT'S WITNESS, SWORN.

DIRECT EXAMINATION

BY MS. WEISMAN:

Q. Sir, would you please state your name and place of employment?

A. Larry Poe, Postmaster, Bowie, Maryland.

Q. And is that the Post Office on Route 197?

A. Yes, it is.

Q. Mr. Poe, how long have you been at that Post Office?

A. Since February of 1974.

Q. And as Postmaster, what are your responsibilities?

A. Administrative operation of the Postal Service in that [74] location.

Q. Now, sir, I'd like to direct your attention to August 6th, 1986. Were you working that day?

A. Yes.

Q. And did there come a time that you became aware of a table with two people outside the Post Office?

A. Yes.

Q. And can you please tell the Court what happened?

A. It was brought to my attention by the window clerk personnel working for me in that location that there were two people outside the building stopping customers as they were approaching the entrance to the Post Office to conduct their business and the clerks were stating that the customers were complaining.

Q. What did you do?

MR. PEMBROKE: Objection.

THE COURT: Overruled.

Q. What did you do then?

A. I went outside to discuss with the people the fact that they should not be there and that it was against our regulations.

Q. And do you see those—either of those people in the Courtroom today?

A. Yes, I do.

Q. Can you please identify them?

[75] A. The young man and the young lady sitting at the table.

Q. Now, I show you what's been marked into evidence as Exhibit Number 21. Do you recognize what that is?

A. Yes. That's the front of the building mainly the service entrance.

Q. And when you say the service entrance what do you mean?

A. This door is the entrance to where customers go in the Post Office to purchase stamps or conduct their business.

Q. How many other entrances are there to the Post Office?

A. One other.

Q. And where is that located?

A. One other for the public in the front of the building and it's to the right of that door not shown in this picture.

Q. And ~~now~~ is that table with those two people what you saw on August 6th?

A. Yes.

Q. And is that where they were when you saw the defendants?

A. Yes.

Q. What did you do when you came outside?

A. I asked them to leave.

Q. Do you recall when that was?

A. Not exactly. I would say approximately 1:00. I was not at the office in the a.m.

Q. So at 1:00 you asked Mr. Pearl and Ms. Kokinda to leave? Do you recall what you said to them?

[76] A. I asked them if I recall properly that if they were aware that they should not be there. They stated that they were entitled to be there, that they had dealt with people before in this same instance and that it had been ruled that they could be there and I stated that it was a violation of our regulations and that they were being instructed to leave.

Q. Now do you let anybody else set up a table outside the Post Office?

A. No, I do not.

Q. What happened after that conversation?

A. They remained there, refused to leave. I went in and contacted the Postal Inspection Service.

Q. And is that Inspector Poe?

A. Inspector Cochran.

Q. I'm sorry. Inspector Cochran's office?

A. Yes.

Q. And did there come a time that the postal inspectors came out to the Post Office?

A. Yes.

Q. When was that?

A. Approximately 3:00.

Q. And were the defendants still there?

A. Yes, they were.

Q. Had they moved at all?

A. No.

[77] Q. Now, did you notice what if anything they had with them?

A. The table was similar to a card table with signs that were stapled or taped to the bottom of the table and there

were brochures and what appeared to be newspapers and books, magazine type material on top of the table.

Q. And did you stop or stay and listen to any of the conversation that either Mr. Pearl or Ms. Kokinda was having with any people?

A. No, I didn't.

Q. What happened after the Postal Inspectors got there?

A. The Postal Inspectors approached them, served them with a written notification of the regulations. It's called Notice 7 that shows that they should not be at that Post Office or at a Post Office, that that was in violation of our regulations and pursued their point of asking them to leave. They in turn refused. The conversation pursued that I was not aware of.

Q. I show you what's been marked for identification as Government's Exhibit Number 20. Do you know what that is?

A. Yes. That's the table that I had just described at its location as I saw it when I arrived at the office and the two people that were working the table.

Q. And Exhibit 22, can you identify that?

A. That's the front of the Post Office, again cars blocking the table, but the table was behind the car there to the right of the service entrance.

[78] Q. And Exhibit Number 17. These are out of order. I'm sorry. Can you identify that?

A. Yes. That's another picture of the table, the two people involved and Mr. Cochran. In fact, I'm standing in the background.

Q. And Exhibit 18, can you identify that?

A. That's the table, the front of the office, the two people that are involved and the other inspector, Mr. O'Hara and Mr. Cochran.

Q. And Exhibit Number 19, can you identify that?

A. That is Mr. Pearl.

Q. And what is to his immediate right, immediately behind him?

A. That is the Post Office mail box whereby people deposit letters to be mailed. That is the initial onset of their mail, they place it in the system through that mail box.

Q. And is that mail box open even when the Post Office building is closed?

A. Yes, it is.

Q. And are these fair and accurate pictures of the way the front of the Post Office looked that day, August 6th?

A. Yes, it is.

MS. WEISMAN: Your Honor, we would offer Exhibits 20, 22, 17, 18, and 19 into evidence.

THE COURT: Any objection?

[79] MR. PEMBROKE: No objection.

THE COURT: They're received without objection.

Q. Now between 1:00 when you first asked the defendants to leave and 3:00 or so when the Postal Inspectors got there, do you know if they remained on the premises?

A. Yes, they did remain on the premises. I can't say that they were there continuously but I did view them on several occasion in that couple hours and they were there and did not appear to have ever moved.

Q. And did you get any more complaints?

A. Oh, yes.

MR. PEMBROKE: Objection.

THE COURT: Overruled.

Q. Do you recall how many complaints you got that day?

A. Approximately 40 to 50.

MR. PEMBROKE: Objection.

THE COURT: Overruled.

MS. WEISMAN: I have no further questions of Mr. Poe, your Honor.

THE COURT: Cross?

MR. PEMBROKE: Court's indulgence.

(Pause.)

CROSS-EXAMINATION

BY MR. PEMBROKE:

Q. Mr. Poe, during the afternoon on August 6th, isn't it true [80] that Postal Service employees were requesting patrons to fill out written complaints?

A. Not to my knowledge.

Q. I take it then you didn't ask anybody to fill out any complaints?

A. No.

Q. Were these 40 or 50 complaints that you just testified to made to you or to someone else?

A. They were made to clerks in addition to myself.

Q. Did you have any conversation with the defendants?

A. Other than asking them to leave, asking them were they aware that they were not supposed to be there, I cannot recall any other conversation. Possibly on one occasion that the same group was there on a separate occasion.

Q. Oh, okay. I'm not asking you about –

A. I'm not sure what I asked them. It might have been these two people about their car being parked in the parking lot that I wanted it moved.

Q. All right. Then is it a fair statement that based on your personal knowlege – is it a fair statement that you have no personal knowledge that there were on the premises soliciting?

A. I have no personal knowledge that they were soliciting, no, only through what people –

Q. That's the answer, answer to the question. You indicated your [sic] the Postmaster?

[81] A. Yes.

Q. And that you have – you have been there since February of '74?

A. Right.

Q. You're familiar then with the regulation under which they were arrested?

A. Yes. It's rules of conduct on postal property.

Q. Is it your understanding of those rules of conduct on postal property that the free distribution of literature is permitted or prohibited?

MS. WEISMAN: Objection.

THE COURT: Sustained. That's first of all legal conclusion and I think as I read it that's beyond question there. That is conceded by the Government as a matter of record in various Courts.

MR. PEMBROKE: Well, your Honor, the foundation for asking questions is Mr. Poe is the one who made the call to Mr. Cochran and Mr. Cochran –

THE COURT: Assuming his has – assuming he would have, for sake of argument, a misunderstanding?

MR. PEMBROKE: Yes, your Honor.

THE COURT: What would be the relevance? Suppose he –

MR. PEMBROKE: The –

THE COURT: – his lawyer told him something dif[82]ferent.

MR. PEMBROKE: Well, the relevance would be what his understanding of it was predominantly at the time this was going on, during the same time he made that phone call to Mr. Cochran. I'm sure – in other words, I'm sure that – well, I'm not sure, I'm presuming that he simply didn't call him and say I've got an annoyance here, so

therefore his interpretation just as Mr. Cochran's interpretation of what that regulation permits and prohibits is important.

THE COURT: I don't see why.

MR. PEMBROKE: Well it's important in terms—in terms of what they were doing, the foundation of what they were doing. He indicates that he didn't have any conversations with them.

THE COURT: These are facts.

MR. PEMBROKE: Yes, your Honor.

THE COURT: What's going through his mind or his interpretation or misinterpretation is—

MR. PEMBROKE: Very well. I'll withdraw the question.

THE COURT: —immaterial and irrelevant to me.

MR. PEMBROKE: I have no further questions.

THE COURT: Can you describe this building that you call the Bowie Post Office?

THE WITNESS: Can I describe it?

[83] THE COURT: Where it is or what it is and what's around it?

THE WITNESS: The Bowie Post Office is a brick structure approximately 10,000 square feet in size, a canopy in the front with two entrance doors, one service, one Post Office box entrance, a sign on the front that says Bowie, Maryland with the zip code U.S. Postal Service. It sits approximately 50 feet from the public sidewalk with its own parking lot and sidewalk directly in front of the building on the premises.

THE COURT: There are several pictures here. As you look at them, Defendants' A is one and a smaller one is Government's 22. Do they fair and accurately represent the Post Office that you were managing on August 6th, 1986?

THE WITNESS: Yes, it does.

THE COURT: What other activity, business, commercial, private, is around your Bowie Post Office?

THE WITNESS: On the right side looking at this picture there is a kennel, a dog kennel. It's a private residence. It appears to be a private residence with a kennel in the rear of the residence and rear of that parking lot building and our building. There is nothing to the left of it. Housing development directly across the street. As this picture is indicating, the picture was taken from the public sidewalk adjacent to the street and that passes in front of Route 197.

[84] THE COURT: You're saying this picture—there's a number on the back of it.

THE WITNESS: Okay. This picture, Defendants' Exhibit Number A.

THE COURT: A, all right. Would you describe that again?

THE WITNESS: Okay. The picture denotes that someone is standing on the public sidewalk that is directly adjacent to the roadway Route 197 shooting across the parking lot to the building.

THE COURT: Does your—I say your—does the Post Office parking lot service any other activity?

THE WITNESS: No, it does not.

THE COURT: The building is a freestanding building?

THE WITNESS: Yes, it is.

THE COURT: Government, any redirect?

REDIRECT EXAMINATION

BY MS. WEISMAN:

Q. Is there a Post Office—a sidewalk along 197?

A. Yes, there is.

Q. I show you what's been marked as Exhibit A. Do you recognize what that is?

A. Exhibit A is a plot of the Postal Service property and the building.

Q. And on the side that says property line, what is next to [85] that, to the left of the picture?

A. A wooded area.

Q. And to the right of the picture, it says patron and employee parking, is that a paved parking lot?

A. Yes.

Q. And is it on the other side of where it says driveway that there's a kennel?

A. Yes.

Q. And the sidewalk that's adjacent, that's right next to the front of the building, is that used to get any other business in the area like the kennel?

A. No, it is not.

MS. WEISMAN: I have no further questions.

THE COURT: Any recross of defendant?

MR. PEMBROKE: No, your Honor.

THE COURT: Thank you, Mr. Poe, you may step down. You may stay or leave.

(Witness excused.)

MS. WEISMAN: Your Honor, that's the Government's case.

THE COURT: All right. Defense?

MR. PEMBROKE: Your Honor, at this time we move for a motion for a judgment of acquittal. I believe that based on – based on the testimony that has been – that has been adduced that there is – there's been insufficient evidence to estab[86]lish that they violated either the regulation or the trespass statute. I believe that there's been no evidence adduced that they were not on the premises lawfully for purposes of in addition to any other reason distributing free literature which would make it a lawful – which would make it lawful activity.

The only evidence that has been adduced at trial to indicate that there was any type of an inconvenience at all was Mrs. Wyatt indicated she had to step off of the sidewalk in order to go around them.

I don't believe that Mr. Poe's testimony saying he had 40 or 50 complaints without specifying in greater detail the nature of those complaints is sufficient. The testimony has been that there are two doors to the Post Office. There's no indication or there was never clearly established beyond a reasonable doubt that the second door is either locked or is not an ingress or egress into the Post Office. So therefore no one has to go past the defendants' table in order to get in or out of the Post Office.

There's been no testimony from anyone I believe that they themselves were either accosted or disturbed by the defendants while the defendants were on the premises. Mrs. Wyatt indicated she didn't speak with them.

THE COURT: You're address 1003 at this point?

MR. PEMBROKE: Yes, your Honor. She indicated she did not speak with them. They did not approach her. [87] Postmaster Poe indicated that he really didn't have any conversations with them either other than requesting them to leave.

I think there's insufficient evidence from the exhibits and also from the testimony that they were soliciting in violation of the statute or that they were trespassing in terms of the prescriptions contained in the Maryland statute. Thank you.

THE COURT: All right. At this posture viewing all counts and the evidence most favorable to the defendant without further comment, I deny the motion.

MR. PEMBROKE: Your Honor, at this time I would move to admit Defense Exhibits A and B.

THE COURT: All right. Received then, A and B as part of the defense case in chief.

MR. PEMBROKE: Your Honor, the defendants wish to present no evidence or testimony at this time and we renew our motion.

THE COURT: Government's argument?

MS. WEISMAN: Your Honor, there are three counts here. The first charges the defendants with soliciting—soliciting contributions on behalf of the National Democratic Policy Committee on postal premises.

Now I ask the Court to look at the evidence that's been submitted that was seized from the defendants. They consist of three filled out forms indicating that people whose [88] names appear on here wish to contribute an amount of money to the National Democratic Policy Committee and there apparently were three of the batch of forms. These are simply Xeroxed forms from a single original apparently. Those are Exhibits 1, 2 and 3.

In addition we have Exhibits 4, 5, and 6. Four is a partially complete credit card slip indicate $25. I'm not sure that it would pass muster with the credit card company but I think that's further indication that somebody was agreeing to pledge $25 to the defendants since it was found on their table. In addition, there are two other incomplete credit card slips which are also—credit card slips are for the single and sole purpose of collecting money from a credit card.

The defendants also had a number of publications which have also been introduced into evidence, your Honor. Exhibits Number 10, 11, 12 and 13 are magazines and newspapers, all of which bear prices and these weren't single exhibit copies. These were one of numberous copies that were sitting on the defendants' table. The prices I suggest indicates that they were being sold and not simply being given away or offered for people to look at at their own convenience.

The defendants also had three books on their table. This wasn't the only copy of each of the books, but there were three books. They also bear prices, your Honor. Exhibit Number 14 bears a price of 9.95, Exhibit 15 bears a price of 14.95 [89] and Exhibit 16 bears a suggested contribution of $10.

We submit that those items indicate that the defendants were selling it. They weren't there just spread out one copy for somebody to look at. They were on the table, a lot of them were there and they were clearly there for the purpose of being sold. The credit card slips and the first three exhibits referred to indicate that the defendants in addition were trying to solicit contributions on behalf of the National Democratic Policy Committee.

MR. PEMBROKE: Objection.

THE COURT: Continue.

MS. WEISMAN: The defendants' behavior gives additional credence to that in that the defendants weren't just sitting there. They were actively going up and bothering people, whether it was by blocking the sidewalk or waving pamphlets in front of customers' faces, by actually saying, "Here, we have some literature we'd like to sell you." The defendants were there bothering people. And the reason they were bothering the customers of the Post Office is that they were trying to collect money and solicit contributions. And that's clearly barred by the regulations.

The cases that the Government has cited in its answer to motion to dismiss all refer to the fact that—or, the Circuit Court cases, rather—all refer to the fact that solicitation is an active act. It may be prohibited because [90] you've got to do more than simply pass a pamphlet. You've got to actually talk to people. You've got to get their attention. You've got to bother them. And the first words out of the

defendants' mouths were designed to attract that type of attention. "Are you concerned about crack? You want to hear about drugs?" That was followed, once the defendants had the customer's attention, by an attempt to sell the literature and get money for their organization.

We feel that the regulations are certainly valid on their face. Nobody, no Court has struck them down yet. And there's been litigation in several Circuits throughout the United States. And we've cited all of those. The defendants' behavior was an attempt to collect money and was a violation of that regulation, your Honor. We feel that they should be found guilty of that.

As a result of the fact that they were there collecting money in violation of the regulation and bothering customers, first the Postmaster, and then the Postal Inspectors, who, we submit, were authorized employees of the Postal Service, asked the defendants to leave. They refused to do so. They were asked to leave at 1:00, and they refused to do so. They were asked to leave again when the Postal Inspectors arrived at approximately 3:00, and they refused to do so. They were given notice of their – the prohibition on solicitation on Post Office property. They were given every opportunity to [91] leave and comply with the orders of the Postmaster and Postal Inspectors. They didn't do so, and we feel that that is disobeying a lawful order of a Postal Inspector, your Honor, in violation of the second count of the information.

As to the third count, we submit that 40 to 50 complaints during the course of the day is disturbing to the conduct of the Post Office. The Government did not bring in 40 or 50 separate postal customers to say that they were being solicited. We brought in only one under these circumstances. But the Postal Inspector was spending his day fielding complaints, apparently. Several times during the course of the afternoon he had to go outside, see what was

happening. His clerks had to listen to the complaints of customers. They were not bystanders. They weren't mailing packages. What they were doing was bothering postal inspect – the postal patrons. In fact, Mrs. Wyatt's statement was, "The parking lot is really, really busy." She had to wait, as usual, for a parking space to open up. The defendants were asked to move their car, and they did not. She also testified that she couldn't understand why she couldn't sell Girl Scout cookies there, if anybody can set up a table on the post – on the sidewalk. And I think, your Honor, that that illustrates precisely the reason that they were bothering people and that type of activity is not allowed, because it does bother other people. They can't simply go there and go about their lawful business. They have to be [92] bothered by these people.

The defendants' activity, Mr. Poe testified, disturbed, certainly, his employees, as well as the customers he dealt with. It certainly disturbed Mrs. Wyatt. And we feel that the defendant should be found guilty of the third count of the information as well.

THE COURT: Defense?

MR. PEMBROKE: Your Honor, I would just like to – I – I raised one objection with reference to the credit card slips, your Honor. Some of them are incomplete. Some of them are not filled out at all. There's no dates on them. Nobody saw anything or – or heard any exchange involving them. I certainly think that there is nothing that has been placed into evidence in this hearing from which the inference can be raised, as prosecution that the defendants were going up waving material in the faces of people. I think that's clearly outside the evidence and we object to that. And I think that simply because books have price tags on them without evidence that they were offered for – for sale at a particular price, I think it's speculation on the part of the – the Government and based on – on

testimony that's—that doesn't exist in the trial, that they were offered for sale. I don't think there's any indication, other than—I don't think their mere presence on the table is enough. It is—it is just as likely, we submit, or at least it's possible, that—that these books would [93] have been distributed free of charge if someone had asked them. I don't believe that the testimony of Mrs. Wyatt indicates that because she had to step off the curb, that that—that that indicates that they're being disruptive of her, or disturbing to—to the business in general. Thank you.

THE COURT: All right. In this case it's the matter of the enforcement of the Postal regulation barring completely any solicitation on Postal property. It's the Government's three-count information states the defendants ran afoul of on August 6th, 1986. In other cases before the Federal Circuits it's clear that the regulations do not proscribe or prohibit in any manner the mere distribution of such literature. And, in fact, as I read one or two of the cases, there's even a concession by—by the Government to—and indeed, in this case, they are not merely—or—or they are not charged with merely distributing, or having a general discussion of protected First Amendment matters. But in reaching whether or not, one, whether its regulation as applied in this case, having been held constitutional on its face by at least two Circuits, is constitutionally applied in this case, we have to make the factual, as I read the cases, determination of the—of the property of this particular Post Office. I don't know what one case says that 30,000 or more different Post Office configurations. But it appears to me, from listening to the Government's witnesses, and viewing—and viewing the—the [94] photographs, that this particular Bowie Post Office would fall into the class of the non-traditional and non-public type of property, as the property analysis discussions are just by the Courts following the Supreme Court's own distinction. And I find that as a fact based upon the photographs and the testimony that, number one, it is—when I say it, the Bowie Post Office—is a free-standing building. That the sidewalk in question on which the card table and the two defendants were conducting their activities on August 6th, 1986, the sidewalks were for the sole and exclusive purpose of ingress and egress to the—to the Post Office, that the parking immediately in front and—parking immediately in front of that particular sidewalk was limited by signs to 15-minute parking only, which you can infer was for the Post Office. And the—and the testimony of the—of Mr. Poe was that there's no other business around this free-standing building set back from the municipal sidewalk of—of Bowie, Maryland. So I think it is not like the situation in *Grace,* as I read it, but more akin and exactly like the other cases in which they've held that when a Post Office fits that—fits those characteristics, it—it is distinguishable from public sidewalks, generally. And it is not the traditional public form, but is that special, nontraditional form [sic] open to the public for the—for conducting business of the—of the Post Office. And so that therefore the regulation that's to be applied in such factual setting as I [95] find in this case is that the regulation, A, has to be content neutral and reasonable. Of course, that, as I already indicated, is really—that regulation as applied has passed muster. And far be it for me in this case and I find no reason to do otherwise than to hold that it does withstand First Amendment scrutiny.

Then having said that, then there has to be evidence which would convince me beyond a reasonable doubt that there was solicitation at that factual setting and not the mere distribution of literature. That's a closer question certainly and the evidence is not particularly overwhelming and I would have to disregard that people are, quote, bothered. They may be bothered if you're giving away

literature or talking about the earth is coming to an end. So it's not the question of people are bothered but is there sufficient evidence before that I can find that in fact that I'm convinced beyond a reasonable doubt that there was solicitation. And although it's limited I think the evidence is there including but not limited to the Visa slips on an open card table on August 6th, blanks for the new Solidarity, filled in or partially completed solicitation forms of the National Democratic Policy Committee with amounts of money indicated, that a rational person could certainly infer from all the evidence that this would indicate beyond a reasonable doubt that solicitation was taking place and not mere distribution of free ideas of free literature.

[96] So I'm convinced beyond a reasonable doubt the defendants on August 6th, 1986 are guilty of the regulation prohibiting the solicitation which in this particular case is embodied in Count One of the information as amended and judgment is guilty as to each defendant as to Count One.

Having found that, as to Count Two, in listening to the evidence it is clear that they were given a lawful order to cease and desist that activity but chose at their peril to continue until an arrest situation was forced upon them. I'm convinced beyond a reasonable doubt that they failed to follow the lawful order and did refuse to leave and the verdict is guilty as to each of the two defendants as to Count Two.

For purposes of judgment and sentencing I'm constrained to find—Count Three would be merged because it is talking about the same type of trespassing arising from a refusal to leave and so for purposes of judgment and sentencing I find as a fact that—all the fact would support a conviction under Count Three merge into Counts One and Two and so we're show general verdict of not guilty as to Count Three.

Now with respect to sentencing on the two petty offenses under CFR, request for presentence or ready for sentencing or deferred sentencing?

MR. PEMBROKE: We would—we'd request a presentence investigation.

MS. WEISMAN: We have no problems with that, your [97] Honor. As to Mr. Pearl I think that might be warranted.

THE COURT: All right. As to each, they're on parole—parole, you can tell where I came from—is the U.S. Probation Office still in business today up there? All right. Then each defendant is directed to report forthwith to the Seventh Floor to the U.S. Probation Office for a presentence investigation, continue on personal bond with the same restriction as amended at the time of the last hearing, that is not to return for solicitation purposes to any Postal Service or to violate any other lawful order obviously. Keep in contact with counsel and sentencing date, Government can be—doesn't have to be a regular day?

MS. WEISMAN: That's true, your Honor. January 8th, I know they will have things done by then.

THE COURT: January the 8th?

MR. PEMBROKE: Your Honor, I'm scheduled for trial on the 6th, 7th, 8th.

MS. WEISMAN: It can be the following week.

THE COURT: The following week?

MR. PEMBROKE: The following week really isn't any better.

THE COURT: The 22nd?

MR. PEMBROKE: The 22nd looks good.

THE COURT: All right. January 22nd at 1:00, 1987. You're to arrive here early that day if not before to review [98] the presentence investigation, counsel.

MR. PEMBROKE: Yes, sir, I'll probably—

THE COURT: I'll probably have it before and any sentencing memoranda you may wish to supply.

MR. PEMBROKE: Perhaps the Court could loan some guidance. Approximately how long before the hearing do the PSI's usually come in?

THE COURT: Oh, with this extended time you'll have it at least right after the first of the year.

MS. WEISMAN: They'll send a note to counsel.

THE COURT: You'll have it early—early in January and to address what you wish to address for sentencing purposes.

MR. PEMBROKE: Thank you, your Honor.

THE COURT: It was a well tried case, counsel.

MR. PEMBROKE: Thank you.

THE COURT: Points factually, legally and overall matters which are still not free from all doubt as to the First Amendment which we are sworn to uphold and we take a personal interest in.

MR. PEMBROKE: I appreciate that.

THE COURT: A well tried case.

(Case adjourned.)

* * * * *

[99]

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Beatrice A. Creamer

J & J COURT TRANSCRIBERS

By: BEATRICE A. CREAMER

DATED: August 19, 1987

GOVERNMENT EXHIBIT 10

EIR

Executive Intelligence Review

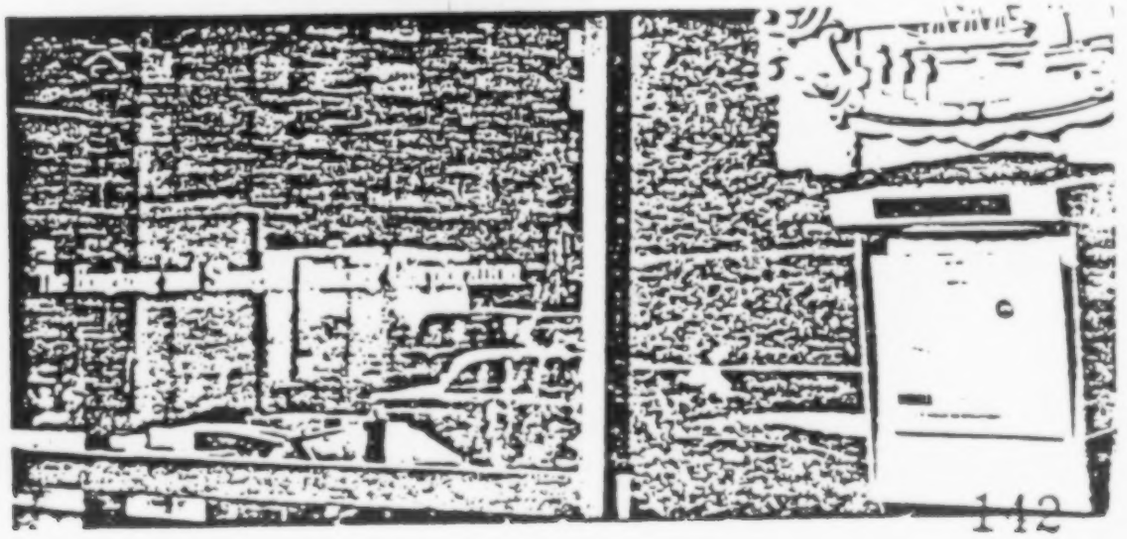
August 1, 1986 - Vol. 13 No. 30 $10.00

Homosexuals in Church move against Pope Ratzinger

Britain hit by grave constitutional crisis

Moscow fears peace breakthrough in Middle East

Will the war on drugs be subverted by William Weld?



GOVERNMENT EXHIBIT
11

LaRouche Warns of 1986 Economic Blowout

State of the Union Message

by Lyndon H. LaRouche, Jr.

NDPC National Democratic Policy Committee

GOVERNMENT EXHIBIT 12

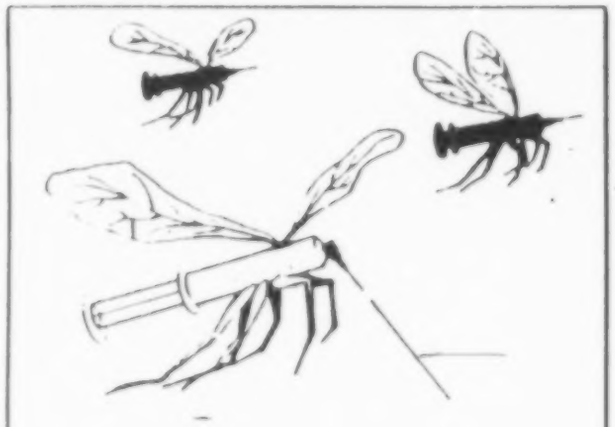
"It was by the press that the morals of this country have been ruined, and it is by the press that they shall be restored."

New Solidarity

★ ★ ★ WEEKEND EDITION ★ ★ ★

50¢ CANADA $1.50 USA

Nonpartisan National Newspaper of the American System • Vol. XVII, No. 41 July 28, 1988



200 to 300 mosquito bites/day

equals

2.0 to 3.0 syringe shot equivalents/day

EIR Medical Director Refutes Critics Of Calif. AIDS Initiative

Dr. John Grauerholz, Medical Director of the Executive Intelligence Review Biological Holocaust Task Force, has issued the following statement in response to a series of statements by senior officials of the California Medical Association on the Acquired Immune Deficiency (AIDS) Initiative Statute which will appear on California's ballot in the Nov. 4 elections. Subheadings have been supplied by the editors.

A series of written and oral statements by various senior officials of the California Medical Association have referred to the AIDS Initiative Statute as "an incredibly bigoted initiative" and "an irrational, inappropriate and misguided approach to a serious public health problem" and have asserted that the adoption of the initiative "could prolong the spread of this terrible disease." Since the statute in fact mandates the application of already existing public health [illegible]

Will Dope Lobby's Queen Abdicate?

'Palace-Gate' Crisis Rocks London, House of Hanover

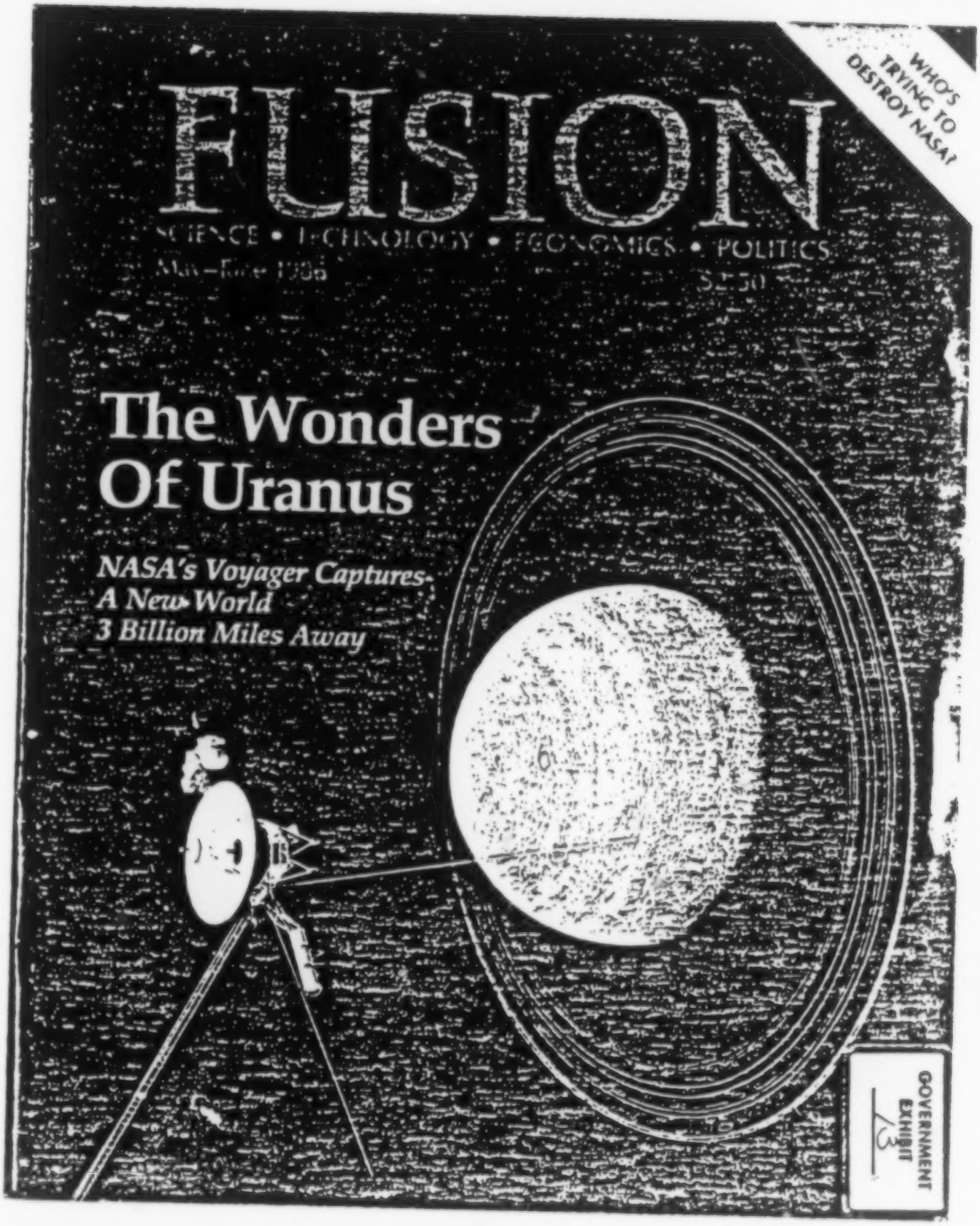
by Chris White

July 22 (NSIPS)—Britain is in the emerging phases of a constitutional crisis which is calling into question the rule of the dope lobby's House of Hanover. Such are the signs from London, where a simmering split between Prime Minister Margaret Thatcher and the reigning Queen Elizabeth has broken into open warfare.

Though the question has been raised by British newspapers and Conservative parliamentarians, it is not possible to say at this point in time, whether the British Queen will be forced, like her uncle Edward VIII, to abdicate, or what the fate of her demented eldest son, Charles, will be. What is clear is that a significant faction of the British Establishment has decided to put an end to the House of Hanover/Windsor's political meddling in areas which threaten the very existence of Western civilization.

The Leak, Queen 'Loathes' Thatcher

The breaking point came this past weekend, on July 20, when the Sunday Times published a background briefing on the Queen's views about the Thatcher government. In the leaked versions published by the Monday tabloids it was reported that "the Queen 'loathes' Thatchers, and Prince Charles feels the same way." Point for point, the leaky briefer lined the Queen up on the side of Russian policy towards the West, down to expressing her "fury" at Prime Minister Thatcher's having permitted President Reagan to deploy U.S. bombers against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The Wonders Of Uranus
NASA's Voyager Captures A New World 3 Billion Miles Away
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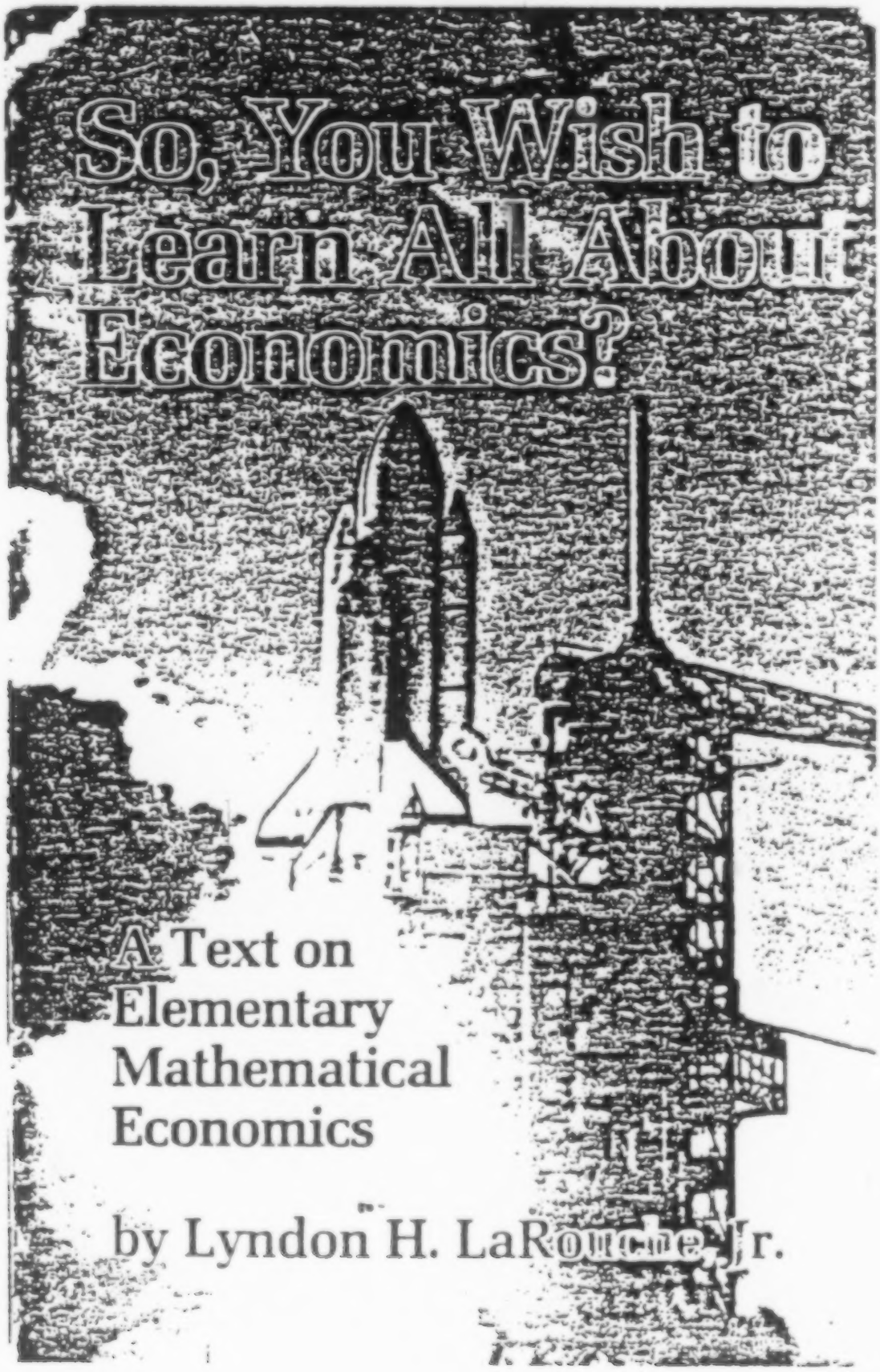

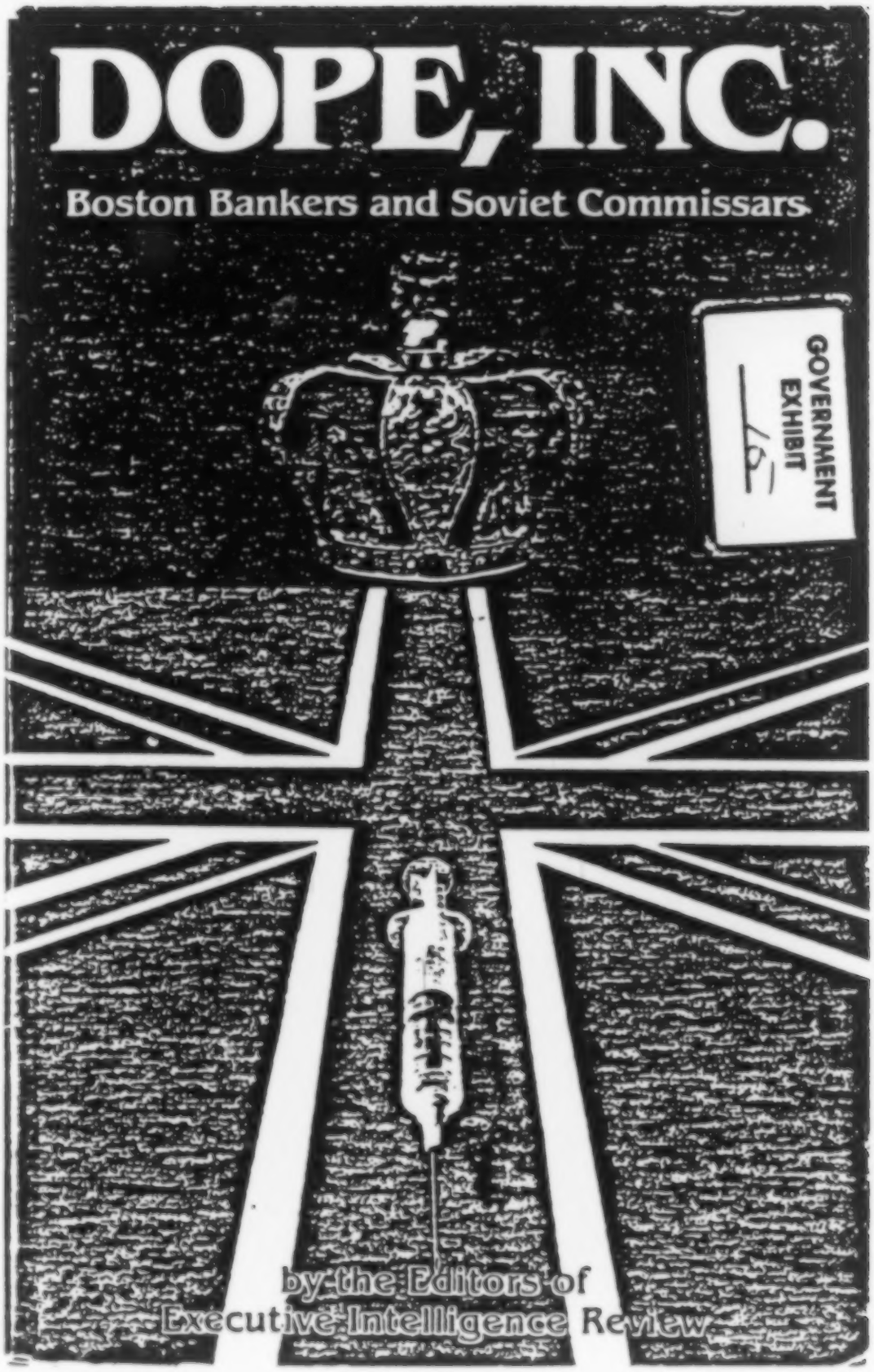
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Boston Bankers and Soviet Commissars
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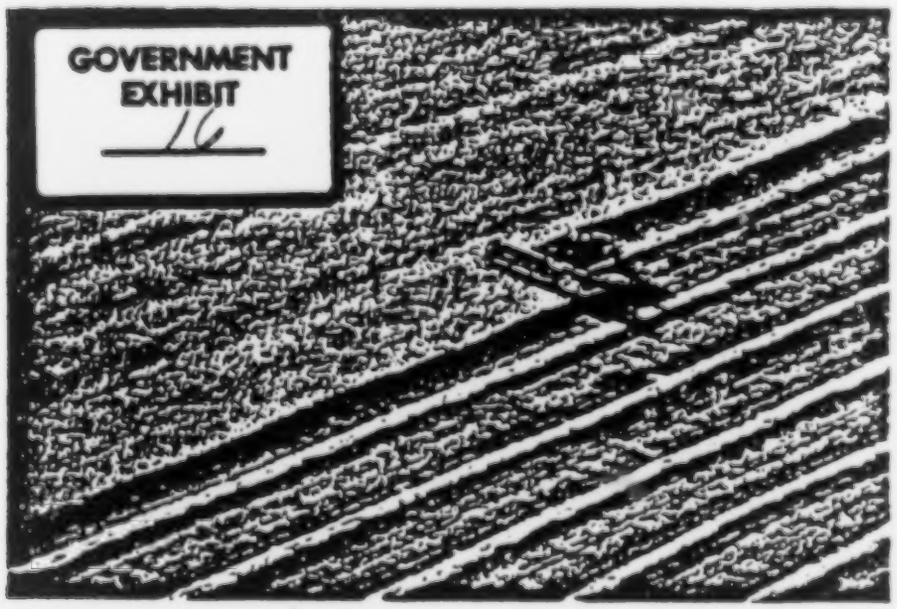
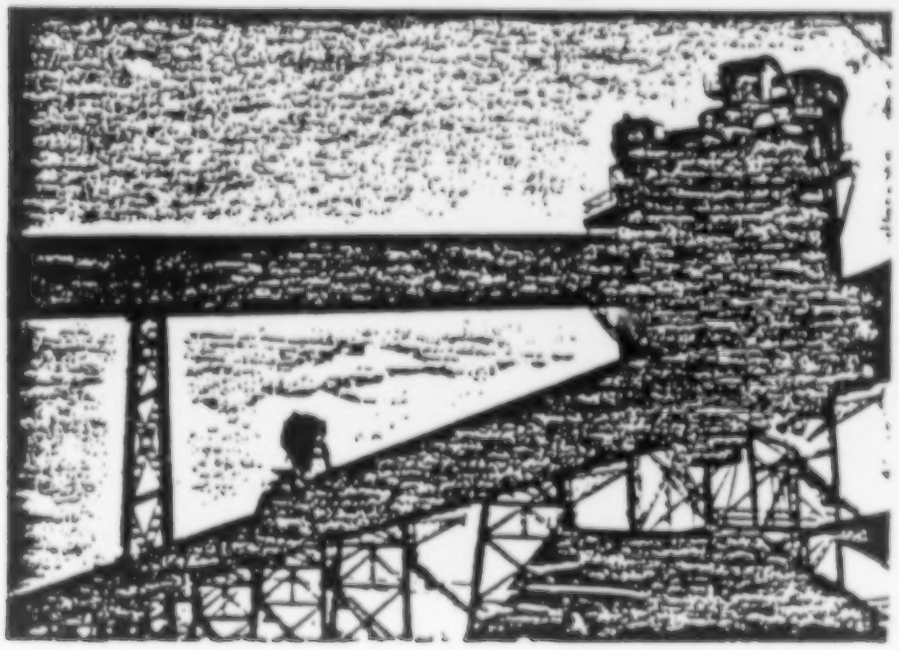


A Program For America

The LaRouche Democratic Campaign



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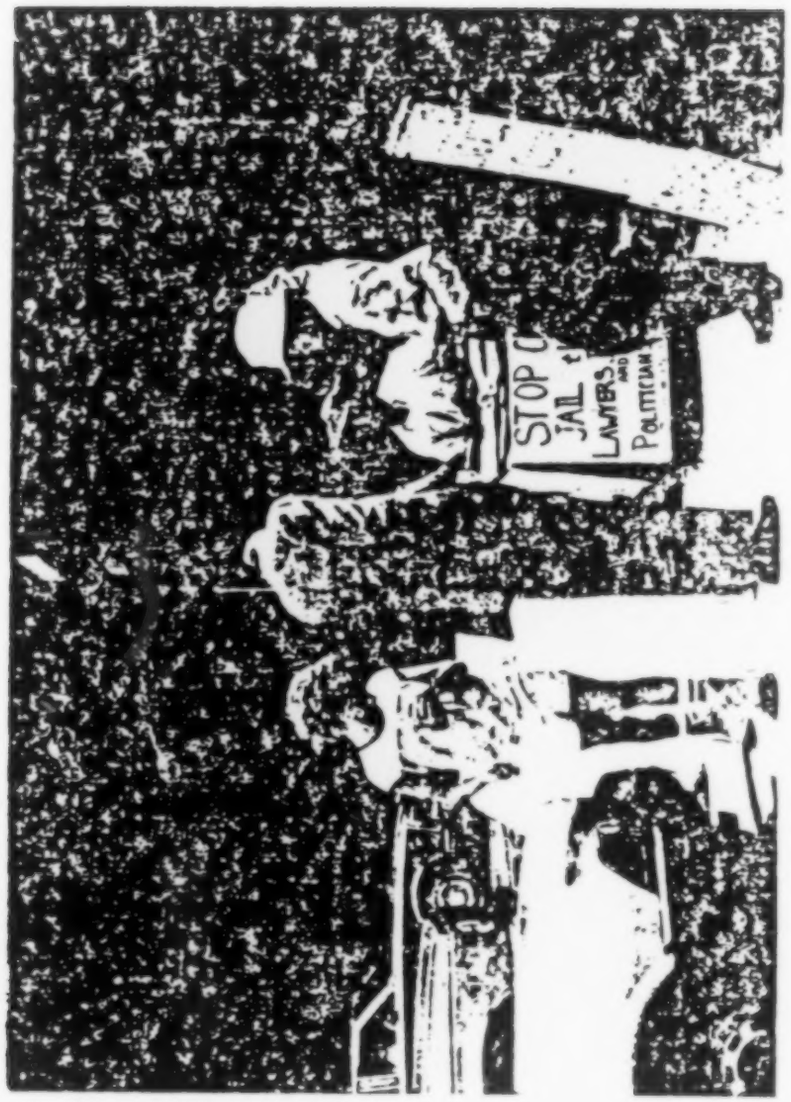

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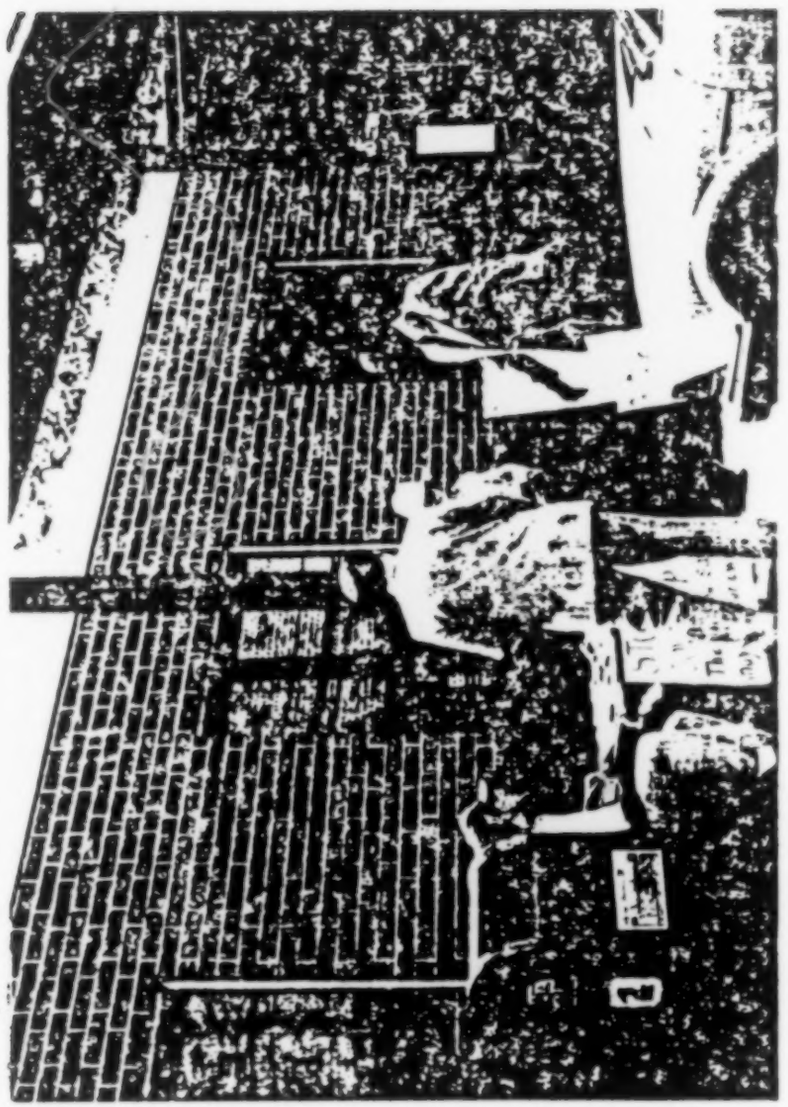

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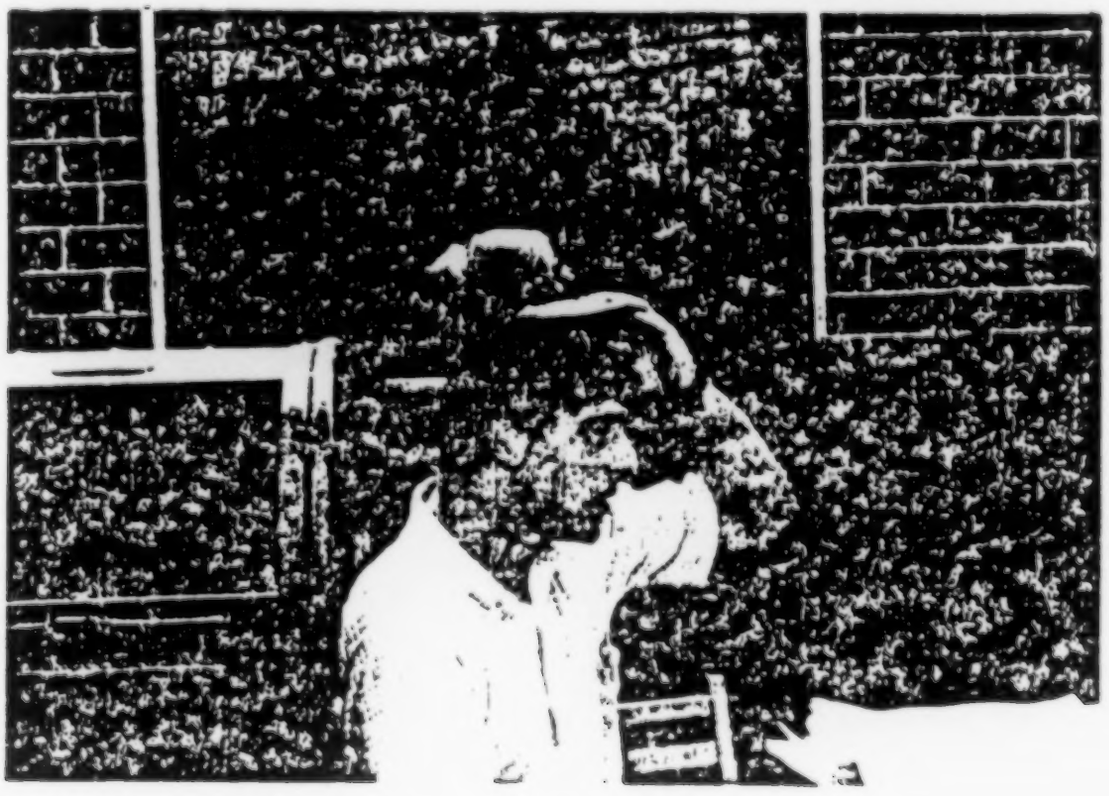

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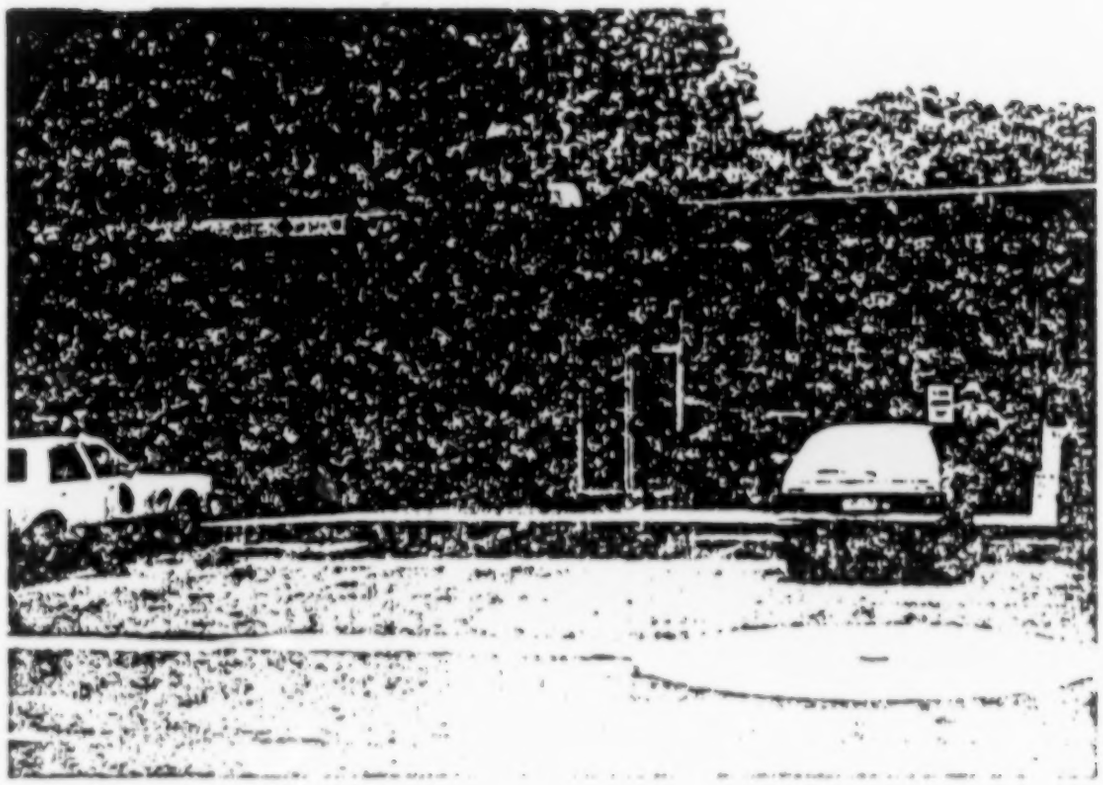
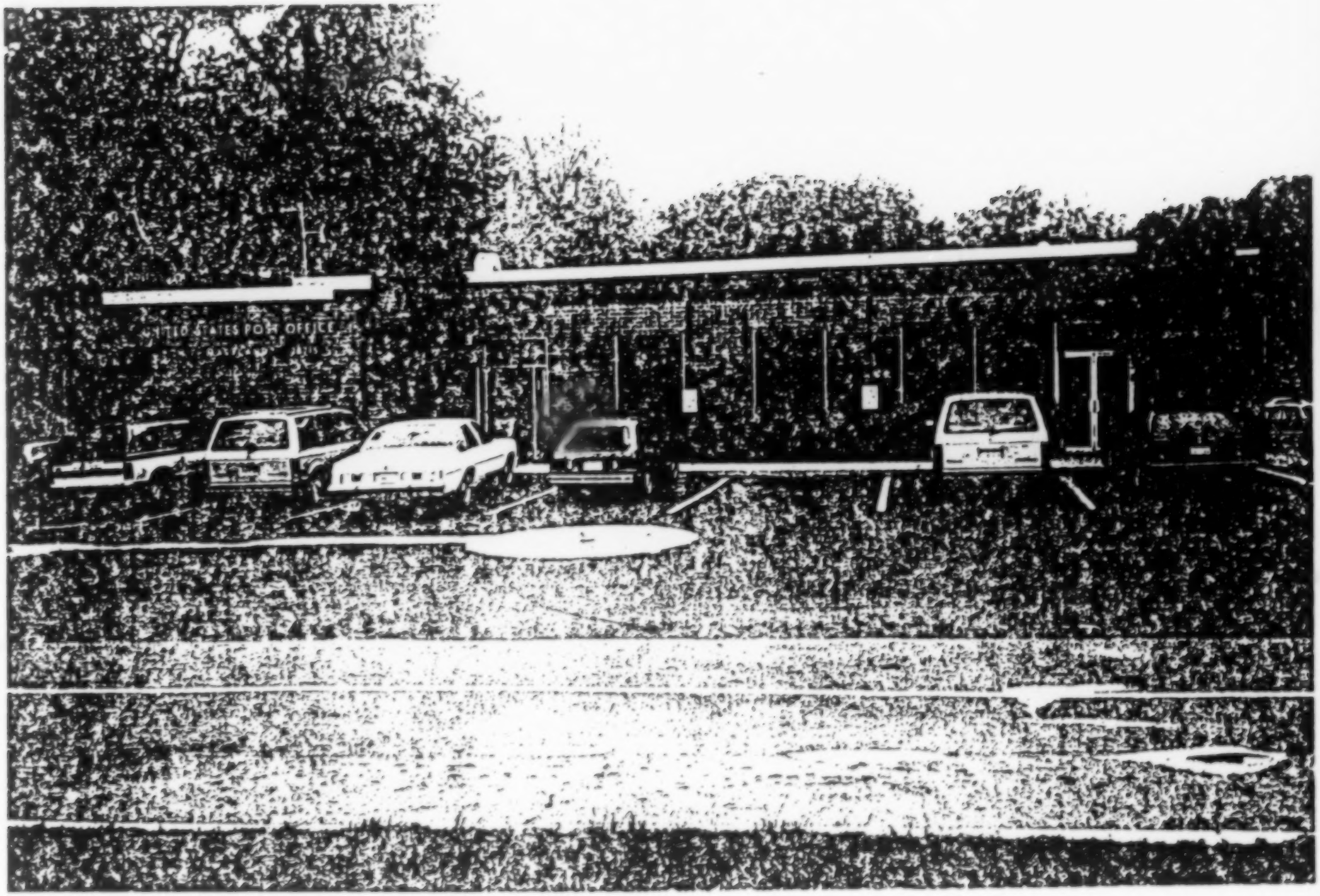
GOVERNMENT EXHIBIT 21

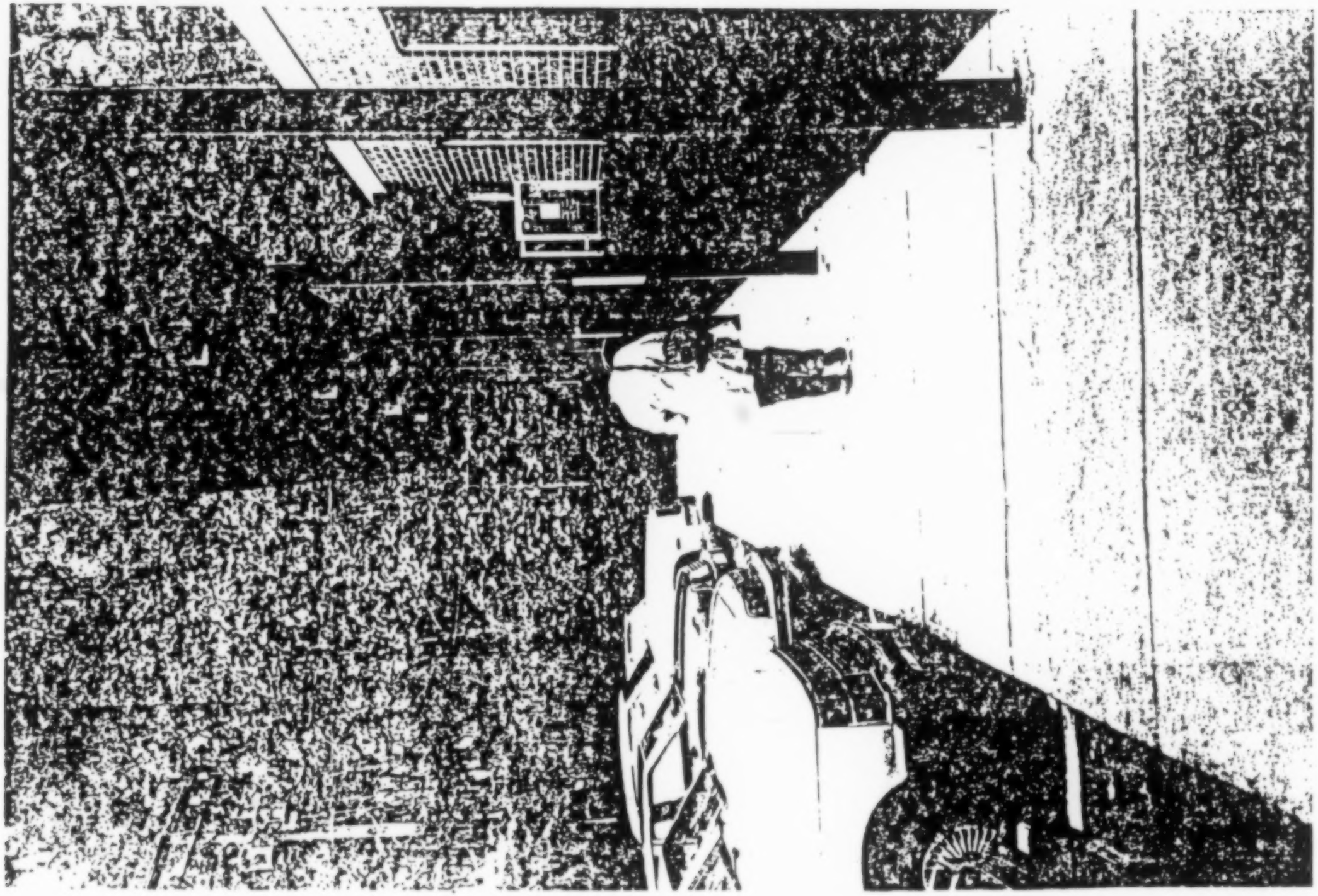
GOVERNMENT EXHIBIT 22



DEFENDANT'S EXHIBIT A



DEFENDANT'S EXHIBIT B



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ORDER ALLOWING CERTIORARI

Supreme Court of the United States

No. 88-2031

UNITED STATES, PETITIONER

v.

MARSHA B. KOKINDA, ET AL.

ORDER ALLOWING CERTIORARI. Filed October 2, 1989.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

October 2, 1989

U.S. GOVERNMENT PRINTING OFFICE: 1989 — 262-203:30008